24-128438-A

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

MICHAEL SZERWINSKI,

Plaintiff / Appellant,

vs.

THE MAIN STREET ASSOCIATES , INC., d/b/a MINSKY'S PIZZA,

Defendant / Appellee.

On Appeal from the District Court of Johnson County
Honorable David W. Hauber, District Court Judge
District Court Case No. 24CV00198

BRIEF OF THE APPELLANT

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Nature of the Case

Michael Szerwinski was injured when a vehicle a driver operated while acting in the course and scope of his employment with the defendant, Minsky's, collided with Mr. Szerwinski's bicycle on a public road. After executing a liability release with the driver, Mr. Szerwinski brought claims for damages against Minsky's for both *respondeat superior* (agency liability) and Minsky's independent negligence for failure to properly hire or train the driver.

Minsky's moved for judgment on the pleadings under K.S.A. § 60-212(c) on both of Mr. Szerwinski's claims, arguing the release with the driver extinguished both of his claims of Minsky's liability. The district court granted Minsky's motion for judgment on the pleadings and dismissed Mr. Szerwinski's petition in its entirety.

Mr. Szerwinski appeals, challenging the dismissal of his second claim against Minsky's for its independently negligent hiring and retention. Judgment on the pleadings on that claim was error. Minsky's failed to provide evidence that it was entitled to a release from liability when Mr. Szerwinski's general release did not specifically identify it by name or terminology, which Kansas's specific-identity rule requires for a release of one party to apply to the independent conduct of another.

The Court should reverse the judgment on the pleadings and remand Mr. Szerwinski's independent negligence claim for further proceedings.

Statement of the Issue

The district court erred in granting Minsky's judgment on the pleadings on Mr. Szerwinski's independent negligence claims. For a general release of liability to release a party's independent liability, the law of Kansas requires that party to be identified by name or specific terminology in the release document. Without that specific identification, there must be a clear intent that the release meant to include that party. Here, Minsky's was not identified in the instrument releasing a different party from liability and there is no evidence Mr. Szerwinski intended to release Minsky's from liability for its independent negligence.

Statement of Facts

A. Overview

Michael Szerwinski was injured after a vehicle collided with his bicycle on a public road (R1 at 2-5). At the time of the accident, the driver, Michael Crocker, was acting in the course and scope of his employment with The Main Street Associates, Inc. d/b/a Minsky's Pizza ("Minsky's") (R1 at 7-8). Mr. Szerwinski and Mr. Crocker entered into a settlement in which Mr. Szerwinski agreed to release all claims against Mr. Crocker in exchange for $100,000 (R1 at 12).

Mr. Szerwinski then filed a separate action for damages against Minsky's stating one claim under the doctrine of *respondeat superior* and another claim for Minsky's independent acts of negligence (R1 at 2-6).

Minsky's moved for judgment on the pleadings under K.S.A. § 60-212(c), requesting the district court dismiss both of Mr. Szerwinski's claims (R3 at 1-9). It argued the release Mr. Szerwinski signed was broad enough to extinguish its liability for both agency liability and any independent torts (R3 at 1-9). Mr. Szerwinski opposed the motion (R3 at 14-26) and the district court heard arguments on it (R2 at 2-9).

After the hearing, the district court granted Minsky's judgment on the pleadings on both of Mr. Szerwinski's claims (R1 at 17-26).

Mr. Szerwinski now appeals (R1 at 27-28).

B. Background

1. Accident

On the evening of September 24, 2022, Micheal Szerwinski was riding his bicycle in Lenexa, Johnson County, eastbound on 79th Street when he

approached the intersection at Lackman Road (R1 at 2). Michael Crocker was driving westbound on 79th Street at the same time in his 2018 Subaru MRX (R1 at 2-3). Mr. Crocker worked for Minsky's and a significant aspect of his job required him to drive a vehicle (R1 at 2, 8). At the time of the accident, Mr. Crocker was acting within the scope of his employment with Minsky's (R1 at 2, 4-5, 8).

The collision occurred when Mr. Crocker attempted to make a left turn onto Lackman Road (R1 at 2-3). During his attempt, he made several errors, including failing to signal his intent to turn and failing to yield to oncoming traffic (R1 at 2-3). As a result, he collided with Mr. Szerwinski's bicycle and Mr. Szerwinski was injured (R1 at 2-3, 5).

2. Release

Nearly a year after the collision, Mr. Szerwinski released and discharged his claims against Mr. Crocker in exchange for $100,000 (R1 at 12). The release specifically identified Mr. Crocker and Mr. Crocker's wife and only discharged the portions of Mr. Szerwinski's claims that were covered by an Allstate Insurance policy (R1 at 12; R2 at 6). The release stated:

> This Indentured Witnesseth that, in consideration of the sum of **One Hundred Thousand Dollars ($100,000.00)** receipt whereof is hereby acknowledged, for myself and for my heirs, personal representatives and assigns, I do hereby release forever discharge **Michael Crocker** and **Marcia Shelby** with respect to claim #0688578327, against Allstate Insurance Company under policy #000000821589911, their heirs, executors and administrators, from the above-specified Allstate Claim, demands, damages, costs, expenses, loss of services, actions, and causes of actions arising from any properly damage, loss of

services and loss or damages of any kind sustained or that I hereafter may sustain in consequence of an accident that occurred on or about the **24th** day of **September, 2022** at or near Lackman Rd. & 79th St.

To procure payment of the said sum, I hereby declare: that I am more than 18 years of age; that no representations about the nature or extent of said injuries, disabilities or damages made by any physician, attorney or agent of any party hereby released, nor any representations regarding the nature or extent of legal liability or financial responsibility of any of the parties released, have induced me to make this settlement; that in determining said sum there has been taken into consideration not only the ascertained injuries, disabilities, and damages, but also the possibility that the injuries sustained may be permanent and progressive and recovery therefrom uncertain and indefinite so that consequences not now anticipated may result from said accident.

I hereby agree that, as a further consideration and inducement for this compromise settlement, that I shall apply to all unknown and unanticipated injuries and damages resulting from said accident, casualty, or event, as well as to those now disclosed.

I understand that the parties hereby released admit no liability of any sort by reason of said accident and that the said payments and settlement in compromise are made to terminate further controversy respecting all claims for damages that we have heretofore asserted or that I or my personal representatives might hereafter assert because of said accident.

I further understand that such liability as I, may or shall have incurred, directly or indirectly, in connection with or for damages arising out of the accident to each person or organization released and discharged of liability herein, and to any other person or organization, is expressly reserved to each of them, such liability not being waived, agreed upon, discharged nor settled by this release.

(R2 at 12) (emphasis in the original). A copy is in the appendix at A11.

Before the final version was signed, another draft of the release was circulated (R3 at 17). The draft contained proposed language that was rejected and not included in the final release (R3 at 17-18). Including the tracked changes, the draft read:

> This Indenture Witnesseth that, in consideration of the sum of **One Hundred Thousand Dollars ($100,000)** receipt whereof is hereby acknowledged, for myself and for my heirs, personal representatives and assigns, I do hereby release forever discharge **Michael Crocker** ~~and~~ with respect to claim #0688578327, against Allstate Insurance Company under policy #000000821589911 ~~any other person, partnership, firm or corporation charged or chargeable with responsibility of liability, their heirs, executors, administrators, associates, representatives, successors, and assigns~~, from ~~any and all~~ the above-specified Allstate Claim ~~claims~~ demands, damages, costs, expenses, loss of services, actions, and causes of actions arising from any act or occurrence, up to the present time, and particularly an account of all personal injury, disability, property damage, loss of services and loss or damages of any kind sustained or that I hereafter may sustain in consequence of an accident that occurred on or about the **24th** day of September, 2022 ~~S eptember, 2 022~~, at or near **Lackman Rd. & 79th St.**

(R3 at 17, 26) (emphasis in the original). A copy is in the appendix at A12.

C. Proceedings below

1. Initial proceedings

On January 12, 2024, Mr. Szerwinski filed an action against Minsky's in the District Court of Johnson County (R1 at 1-6). He alleged he was injured and that he had suffered – and would continue to suffer – damages as a result (R1 at 4-5).

Mr. Szerwinski stated two counts (R1 at 2-6). First, he alleged Mr. Crocker's negligence should be imputed to Minsky's under a *respondeat*

superior theory of agency liability because Mr. Crocker was acting within the course and scope of his employment at the time of the accident (R1 at 2-4). Second, Mr. Szerwinski alleged Minsky's was independently negligent (R1 at 4-6). He alleged Minsky's had a duty to use reasonable care to hire an employee who was competent and fit to perform his or her job (R1 at 4). He alleged Minsky's did not exercise the required reasonable care when it hired Mr. Crocker because Minsky's "knew or should have known that Michael Crocker was incompetent for the position hired and/or Defendant Minsky's had knowledge of Michael Crocker's incompetency to safely operate an automobile but hired and retained Michal Crocker anyway" (R1 at 5). Mr. Szerwinski alleged he was injured as a direct and proximate result of Minsky's negligent hiring or retention of Mr. Crocker (R1 at 5-6).

Minsky's answered and denied all Mr. Szerwinski's claims (R1 at 7-12). It asserted nine affirmative defenses (R1 at 9-11). One defense alleged Mr. Szerwinski's "claims against Minsky's Pizza are barred, in whole or in part, by the doctrine of estoppel and/or release, to the extent that [Mr. Szerwinski's] current allegations contradict their past actions or statements regarding any agreement(s) entered into by the parties" (R1 at 10). Minsky's attached Mr. Szerwinski's release with Mr. Crocker as an exhibit (R1 at 12).

2. Motion for judgment on the pleadings

Minsky's then moved the district court under K.S.A. § 60-212(c) to dismiss Mr. Szerwinski's petition and grant it judgment on the pleadings on both his claims (R3 at 1-9). First, it argued Mr. Szerwinski's *respondeat superior* claim failed because under Kansas law, the release of an employee from direct liability also releases the employer from claims of vicarious

liability (R3 at 3). It argued that as Mr. Crocker was employed by Minsky's and was then released from liability associated with the accident, Minsky's also was released from any claims for vicarious liability (R3 at 2-4).

Minsky's argued the release also covered Mr. Szerwinski's independent claim of negligence against it and so extinguished all its potential liability (R3 at 5-7). It acknowledged that a release of an employee does not automatically release the employer from liability for its own actions or omissions, but argued that the release here was "broad enough to release [Minsky's Pizza] from liability for its own alleged actions" (R3 at 5). Minsky's argued the release stating "all claims for damages that we have heretofore asserted or that I or my personal representatives might hereafter assert because of said accident" was the broad language that released it from its own liability (R3 at 7).

Mr. Szerwinski opposed Minsky's request for judgment on the pleadings (R3 at 14-26). He argued Minsky's could not be insulated from his *respondeat superior* claim because the release was not accompanied by a hold harmless clause (R3 at 20-22). He argued the law of Kansas made a hold harmless clause essential to releasing an employer from a *respondeat superior* claim, and as his release did not have such a clause, Minsky's was still liable (R3 at 20-22).

Mr. Szerwinski also argued his independent negligence claim survived Minsky's request for judgment on the pleadings in any case because the law of Kansas only discharges parties specifically named in a release (R3 at 19). As the release did not identify Minsky's, this "unambiguously demonstrate[d]

[Mr. Szerwinski's] intent to execute a small and partial release while maintaining its claims against" Minsky's (R3 at 17-20).

Mr. Szerwinski attached the previous draft of the release containing the proposed changes to its language (R3 at 17, 26). He argued that when comparing the proposed changes and the final draft, he had manifested his intent to extinguish only the liability of the tortfeasors listed in the release, not Minsky's (R3 at 17).

3. Hearing and judgment

The district court heard argument on Minsky's motion (R2 at 2). There, Minsky's echoed its argument that the release Mr. Szerwinski signed in his settlement with Mr. Crocker simultaneously extinguished its liability on both his claims (R2 at 5).

Mr. Szerwinski's counsel opposed this, arguing the *respondeat superior* claim was still viable because the release was limited and did not include a hold harmless clause (R2 at 8). He also argued Minsky's had a burden to prove he intended to release it from liability when he entered into his settlement with Mr. Crocker (R2 at 5-7). His counsel argued Minsky's failed to meet that burden because the release did not identify Minsky's, and the language specifically removed from a previous version of the release showed he only intended to release those named in the instrument (R2 at 7-8).

The district court granted Minsky's judgment on the pleadings (R1 at 17-26). A copy of its decision is in the appendix at A1-10.

The district court adopted Minsky's arguments concerning Mr. Szerwinski's *respondeat superior* claim, finding that in releasing Mr. Crocker from direct liability, Minsky's, as Mr. Crocker's employer, was relieved then

from vicarious liability under a theory of *respondeat superior* (R1 at 20-24). It also held the broad language in Mr. Szerwinski's release extended to and encompassed Minsky's, releasing Minsky's from any liability for its independently negligent acts, too (R1 at 25-26).

Mr. Szerwinski then timely appealed to this Court (R1 at 27-29).

Argument and Authorities

The district court erred in granting Minsky's judgment on the pleadings on Mr. Szerwinski's independent negligence claims. For a general release of liability to release a party's independent liability, the law of Kansas requires that party to be identified by name or specific terminology in the release document. Without that specific identification, there must be a clear intent that the release meant to include that party. Here, Minsky's was not identified in the instrument releasing a different party from liability and there is no evidence Mr. Szerwinski intended to release Minsky's from liability for its independent negligence.

Record Location Where Raised

Minsky's argued its claim for dismissal in its motion for judgment on the pleadings (R3 at 1-9). Mr. Szerwinski opposed the motion, presenting the argument he now makes here (R1 at 17-26). He also made this argument at the hearing on Minsky's motion for judgment on the pleadings (R2 at 5-8).

Standard of Appellate Review

"An appellate court's review of whether the district court properly granted a motion for judgment on the pleadings is unlimited." *Wagner v. State*, 46 Kan. App. 2d 858, 860, 265 P.3d 577 (2011).

> A motion for judgment on the pleadings under [K.S.A. §] 60-212(c), filed by a defendant, is based upon the premise that the moving party is entitled to judgment on the face of the pleadings themselves and the basic question to be determined is whether, upon the admitted facts, the plaintiffs have stated a cause of action. The motion serves as a means of disposing of the case without a trial where the total result of the pleadings frame the issue in such manner that the disposition of the case is a matter of law on the facts alleged or admitted, leaving no real issue to be tried. The motion operates as an admission by movant of all fact allegations in the opposing party's pleadings.

Clear Water Truck Co., Inc. v. M. Bruenger & Co., Inc., 214 Kan. 139, 140, 519 P.2d 682 (1974) (internal citations omitted).

When a defendant moves for judgment on the pleadings, the district court must determine whether, assuming all the plaintiff's allegations in his petition are true, the plaintiff has stated a legally cognizable claim. *Doe H.B. v. M.J.*, 59 Kan. App. 2d 273, 283, 482 P.3d 596 (2021). If the pleadings disclose a factual issue that must be resolved, "judgment under K.S.A. 60-212(c) is improper." *Id.* (citing *Rector v. Tatham*, 287 Kan. 230, 232, 196 P.3d 364 (2008)). "And when a motion for judgment on the pleadings asks a court to consider information outside of the pleadings … the court must treat the motion as one for summary judgment." *Id.*

* * *

A plaintiff in a negligence case can release one or more parties from all liability. But when a plaintiff alleges a party was independently liable for his injuries, the law of Kansas only extinguishes that party's liability on a release if the release specifically names or identifies that party. Here, when Mr. Szerwinski released Minsky's employee from liability, his release did not specifically identify Minsky's in any way. Nonetheless, the district court entered judgment on the pleadings and dismissed Mr. Szerwinski's independent negligence claim against Minsky's. This was error.

A. A plaintiff can extinguish the liability of one or more parties in a negligence case with a general release.

Before 1974, a negligence action with multiple tortfeasors in Kansas was reviewed strictly under the theory of joint and several liability. *Mulroy v. Olberding*, 29 Kan. App. 2d 757, 763, 30 P.3d 1050 (2001). And "[i]n the

absence of statutory authority, compensatory damages [could] not be apportioned in a judgment establishing liability of the joint tortfeasors, regardless of the degree of culpability." *Id.*

In 1974, the Legislature adopted a comparative negligence statute, eliminating joint and several liability for negligent torts. *Id.* "In comparative negligence cases, the issues involves the percentages of causal responsibility and distinctions between primary, secondary, active and passive negligence lose their previous identities. The nature of misconduct in such cases is to be expressed on the basis of degrees of comparative fault or causation, and the all or nothing concepts are swept aside." *Id.* (quoting *Luther v. Danner*, 268 Kan. 343, 346, 995 P.2d 865 (2000) (internal quotation marks omitted)). With the "all or nothing" rule of common-law softened, the courts then adopted more tempered approaches to analyzing general releases in negligence torts. *Luther*, 268 Kan. at 346.

In *Luther*, the Supreme Court reviewed three approaches other states use to interpret general releases. *Id.*

The Court first reviewed the "flat bar rule," which holds that "language such as all other persons, firms or corporations liable is unambiguous and discharges all potential tortfeasors from liability." *Id.* (citations and internal quotation marks omitted). So, under the flat bar rule, a release containing language referencing "all other persons" is presumed to express an intent to discharge all potential tortfeasors period. *Id.* at 347. This idea is rooted in the common-law "unity of discharge" rule that determined the "release of one joint tortfeasor discharges all others" because of the indivisible wrong of joint

and several liability. *Mulroy*, 29 Kan. App. 2d at 764. But "[a] majority of the states have rejected the flat bar rule when comparative negligence has replaced the concept of indivisible wrong." *Id.* at 764-65. Its rejection stems from the fact that "[a] tortfeasor who has taken no part in the satisfaction of a plaintiff's claim should not gratuitously benefit from settlement arrangements undertaken at the time and expense of others." *Luther*, 268 Kan. at 348.

The second approach the Court reviewed for interpreting general releases was the "specific identity rule." *Id.* at 347. It was "developed as a judicial construction of a uniform law that applies to two or more persons jointly or severally liable in a tort for the same injury." *Id.* at 348 (citation and internal quotation marks omitted). Jurisdictions that have adopted this rule "conclusively presume that the liability of a party not named or otherwise specifically identified by the terms of the release is *not* discharged." *Id.* at 347. (emphasis added). This rule "compels the settling parties either to name non-settling tortfeasors … or to include such terms or descriptions as [to] make the identity of the unnamed beneficiaries or the class thereof reasonably apparent." *Id.* (citations omitted).

The final approach the Court reviewed was the "intent rule." *Id.* The intent rule "emphasizes the contract principle that the parties' intent governs" the court's actions and interpretation. *Mulroy*, 29 Kan.App.2d at 765. It is considered a "middle ground between the plaintiff-oriented specific identity rule and the defendant-oriented flat bar rule." *Luther*, 268 Kan. at 348.

In 1979, this Court adopted the specific identity rule for Kansas in comparative negligence actions. *See Geier v. Wikel*, 4 Kan. App. 2d 188, 190, 603 P.2d 1028 (1979). It held general releases "will have *no effect on any party not specifically named* in the instrument." *Id.* at 190 (emphasis added). Later, in *Luther*, the Supreme Court affirmed the specific identity rule and once again rejected the flat bar rule and the intent rule. 268 Kan. at 351-52.

Therefore, per *Geier* and *Luther*, Minsky's motion for judgment on the pleadings could only be appropriate as to Mr. Szerwinski's claims against it for independent torts if the general release specifically identified Minsky's by name or terminology that made its identity reasonably apparent. It did not.

B. Mr. Szerwinski's general release did not extinguish Minsky's liability for independent torts because the document did not specifically identify Minsky's.

The district court erred in granting Minsky's motion for judgment on the pleadings as to its independent torts because Mr. Szerwinski's general release did not identify Minsky's by name or reasonably apparent terminology.

1. Instruments releasing liability must go beyond boilerplate language and specifically identify the parties to be released.

As addressed above, the Supreme Court and this Court continuously have confirmed that general releases cannot eliminate a defendant's liability for independent torts unless they specifically name or otherwise identify that specific defendant.

In *Geier*, the plaintiff was a passenger who was injured in a collision between the defendant's vehicle and a freight car operated by a railroad. 4 Kan. App. 2d at 188. The plaintiff's brother, who was also a passenger in the

defendant's vehicle, was killed in the collision. *Id*. The plaintiff executed an unconditional release in favor of the railroad in exchange for $5,000. *Id*. The release recited the events of the accident and that the railroad could have been liable for the accident, but it denied liability and the plaintiff desired to settle the entire matter. *Id*. The plaintiff's parents further signed an unconditional release in substantially identical terms with the railroad for the death of their other son. *Id*. at 189.

The plaintiff then sued the defendant driver of the vehicle he was traveling in for independent negligence. *Id*. But the district court granted summary judgment in favor of the defendant "on the theory that the release of one joint tort-feasor releases all." *Id*.

This Court reversed the grant of summary judgment because the unconditional release only identified the railroad and not the defendant driver. *Id*. at 190. It held:

> [t]he injured party is entitled to keep the advantage of his or her bargaining, just as he or she must live with an inadequate settlement should the jury determine larger damages or a larger proportion of fault than the injured party anticipated when the settlement was reached. It follows that the type of release given will have no effect on any party not specifically named in the instrument.

Id.

In *Luther*, a man was killed in an accident in which his motorcycle collided with a truck operated on behalf of a service printing company. 268 Kan. at 343. The man's son was also on the motorcycle and was injured in the collision, too. *Id*. The man's widow then brought a wrongful death action

and personal injury action on behalf of her son against the truck driver and the driver's employer. *Id.*

Before filing suit, the widow executed a general release on behalf of her son with the man's estate containing this language:

> I/We Jacquelin Luther, being of lawful age, acknowledge receipt of Six Thousand Five Hundred Dollars, ($6,500) in hand paid, receipt whereof is hereby acknowledged, do hereby and for their heirs, executors, administrators, successors and assigns release, acquit and forever discharge the estate of Floyd L. Luther, Sr., and Dairyland Insurance Company and their servants, successors, heirs, executors, administrators and all other persons, firms, corporations, associations, or partnerships of and from any and all claims, actions, causes of action, demand, rights, damages, costs, loss of service, expenses, and compensation whatsoever, which the undersigned now have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily injury and personal injuries the consequences thereof resulting or to result from the accident which occurred on the 29th day of July, 1994.
>
> ....
>
> "THE UNDERSIGNED HAVE READ THE FOREGOING RELEASE AND FULLY UNDERSTAND IT AND KNOW THAT IT IS INTENDED TO BE, AND IS, A COMPLETE BAR TO ANY FUTURE CLAIM OR ACTION OF ANY KIND ON ACCOUNT OF ANY INJURIES OR DAMAGES, WHETHER KNOWN OR UNKNOWN AT THIS TIME, CAUSED OR RESULTING FROM THE OCCURRENCE MENTIONED ABOVE.
>
> "CAUTION: READ BEFORE SIGNING!
>
> "/s/ (Jacqueline Luther)
>
> "/s/ (Atty. Timothy King)
>
> "/s/ (Kathleen Wohlgemuth as administratrix of the estate)

Id. at 344.

This Court ultimately affirmed the district court's grant of summary judgment because "so far as [the widow] is concerned, in her individual capacity, the release is plain, unambiguous, and binding as to all tortfeasors." *Id*. at 345. The Supreme Court reversed. Instead, it held the boilerplate language in the release could not be the basis for granting summary judgment because the defendant was "not identified in the release by name or other specific identifying terminology." *Id*. at 351-52. Thus, there was a rebuttable presumption that the release was not intended to apply to the defendant and the defendant did not meet its burden. *Id*. at 352.

Finally, in *Wright v. Bachmurski*, an accountant brought a defamation action against his former clients for statements in an interview a local newspaper published. 29 Kan. App. 2d 595, 597, 29 P.3d 979 (2001). The accountant contacted the newspaper about the article's inaccuracies and they reached an agreement in which the newspaper paid the accountant "$120,000 to satisfy all claims and damages against the newspaper and its employees that resulted from the publication of the article." *Id*. at 598.

The accountant then filed a defamation suit against his former clients for the statements made in the article. *Id*. The district court granted the former clients summary judgment because as joint tortfeasors, they would also be released from liability. *Id*. at 599. This Court reversed, holding the district court's theory on the effect of the newspaper's release was incorrect. *Id*. at 600. It held:

> [T]he release is between Richard Todd Wright and Pool & Company and the White Corporation, Inc., doing business as the

> Emporia Gazette. Fosdick and Bachmurski are not specifically mentioned. Applying Restatement (Third) Torts: Apportionment of Liability § 24, comments f and g (2000), the intent of the parties is given effect to the contract, and if there is a dispute over whether a particular individual is released, the burden of pleading and proving that the settlement releases the individual is on the party claiming release.
>
> Fosdick and Bachmurski have not met their burden that they are released from liability through the Emporia Gazette release. The intent of the release was to shield the Emporia Gazette from liability through the settlement. The release has no effect on Fosdick's and Bachmurski's liability for damages. Fosdick and Bachmurski are still liable for all consequential damages flowing from the defamatory statements to the reporter and the newspaper's republication.

Id. at 604.

2. The release did not name or otherwise identify Minsky's, so it cannot be deemed to have released Minsky's.

Here, as in above decisions, Mr. Szerwinksi did not name Minsky's in his release. Nor did he use any specific identifying terminology that would make Minsky's identity reasonably apparent. The pertinent language of the release states:

> This Indenture Witnesseth that, in consideration of the sum of **One Hundred Thousand Dollars ($100,000.00)** receipt whereof is hereby acknowledged, for myself and for my heirs, personal representatives and assigns, I do hereby release forever discharge **Michael Crocker and Marcia Shelby** with respect to claim #0688578327, against Allstate Insurance Company under policy #000000821589911, their heirs, executors and administrators, from the above-specified Allstate Claim, demands, damages, costs, expenses, loss of services, actions, and causes of actions arising from any act or occurrence, up to the present time, and particularly an account of all personal injury, disability, property damage, loss of service and loss or damage of

> any kind sustained or that I hereafter may sustain in consequence of an accident that occurred on or about the **24th** day of **September, 2022** at or near Lackman Rd & 79th St.

(R1 at 12) (emphasis in the original).

This case and *Luther* are effectively the same. Mr. Szerwinski brought an independent negligence claim against an employer after executing a release with a would-be joint tortfeasor (R1 at 1-6, 12). But the release did not specifically name the employer (R1 at 12). Nor did it contain specific identifying terminology that would plainly allude to the employer (R1 at 12). Therefore, Mr. Szerwinski's general release does not satisfy Kansas's specific-identity rule for the employer's independent negligence.

Where an entity is not specifically named or identified in a release, there is a rebuttable presumption that its release was not intended. *Luther*, 268 Kan. at 352. Minsky's has not met its burden of rebutting the presumption because the district court merely entered a judgment on the pleadings after failing "to follow the approach that is consistent with comparative fault principles." *Id*. at 352. This was error. This Court should reverse the district court's judgment.

3. Even under the intent rule, Minsky's liability would not be extinguished.

If this Court somehow holds the stricter "intent rule" should apply, Minsky's would remain liable. Mr. Szerwinski's release also satisfies the stricter intent rule.

As stated above, the intent rule "emphasizes the contract principle that the parties' intent governs" the court's actions and interpretation. *Mulroy*, 29 Kan. App. 2d at 765. Intent can be gleaned from the instrument itself. *Sade*

v. Hemstrom, 205 Kan. 514, 522, 471 P.2d 340 (1970). And "since the defendant was not a party to the written release, parol evidence may be introduced to determine the intention of the parties." *Fieser v. St. Francis Hosp. & Sch. of Nursing, Inc.*, 212 Kan. 35, 42, 510 P.2d 145 (1973) (internal citations omitted), *overruled on other grounds by Puckett v. Mt. Carmel Reg'l Med. Ctr.*, 290 Kan. 406, 228 P.3d 1048 (2010).

Here, nothing within the four corners of the instrument indicates Mr. Szerwinski intended to release Minsky's. The only parties expressly released are Michael Crocker and Marcia Shelby (R1 at 12). The release does not name or refer to Minsky's (R1 at 12). And the acknowledgment that the settlement was "made to terminate further controversy respecting all claims for damages that we have heretofore asserted or that I or my personal representatives might hereafter assert because of said accident" was limited to the parties released (R1 at 12). Without any clear reference to Minsky's, its identity could not be reasonably apparent. Therefore, this instrument cannot release Minsky's.

Mr. Szerwinski further displayed his intent to limit the release to those named in the instrument when he presented a draft of the release containing rejections to proposed language no longer present in the final version of the release. The proposed changes included:

> This Indenture Witnesseth that, in consideration of the sum of **One Hundred Thousand Dollars ($100,000)** receipt whereof is hereby acknowledged, for myself and for my heirs, personal representatives and assigns, I do hereby release forever discharge **Michael Crocker** ~~and~~ with respect to claim #0688578327, against Allstate Insurance Company under policy #000000821589911 ~~any other person, partnership, firm or~~

~~corporation charged or chargeable with responsibility of liability, their heirs, executors, administrators, associates, representatives, successors, and assigns~~, from ~~any and all~~ the above-specified Allstate Claim ~~claims~~ demands, damages, costs, expenses, loss of services, actions, and causes of actions arising from any act or occurrence, up to the present time, and particularly an account of all personal injury, disability, property damage, loss of services and loss or damages of any kind sustained or that I hereafter may sustain in consequence of an accident that occurred on or about the **24th** day of September, 2022 ~~S eptember, 2 022~~, at or near **Lackman Rd. & 79th St.**

(R3 at 17, 26) (emphasis in original).

The parties – Mr. Szerwinski and Mr. Crocker – bargained for these amendments (R2 at 6-7). By removing the language granting "any other person, partnership, firm, or corporation charged or chargeable with responsibility or liability," Mr. Szerwinski accomplished two things. First, he displayed his intent not to release Minsky's from liability because Minsky's *is* a corporation chargeable with responsibility or liability. Second, he removed the only "terms or descriptions as [to] make" Minsky's identity "reasonably apparent." *Luther*, 268 Kan. at 347.

Mr. Szerwinski plainly intended to limit the scope of the release to the parties specifically named or referenced in it: Michael Crocker and Marcia Shelby. Minsky's is not named, nor is its identity reasonably apparent from some specific terminology. Therefore, its liability cannot be terminated by the broad boilerplate language contained in the remainder of the release.

The district court erred in granting judgment on the pleadings on Mr. Szerwinski's independent negligence claim against Minsky's. This Court should reverse the district court's judgment.

Conclusion

This Court should reverse the district court's judgment on the pleadings on Mr. Szerwinski's independent negligence claim and remand the case for further proceedings on that claim.

Respectfully submitted,

Jonathan Sternberg, Attorney, P.C.

by /s/Jonathan Sternberg

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Certificate of Service

I certify that on March 31, 2025, I electronically filed a true and accurate Adobe PDF copy of this brief via the Court's electronic filing system, which notified the following of that filing:

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Appendix

Order on Motion for Judgment on the Pleadings (Aug. 30, 2024) (R1 at 17-26) A1

Release of All Claims (July 13, 2023) (R1 at 12) A11

Edited version of Release of All Claims (R3 at 26) A12

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

CIVIL COURT DEPARTMENT

Michael Szerwinski	)	
	)	
Plaintiff,	)	Case No. 24CV198
	)	Chapter 60; Division 7
v.	)	
	)	
	)	
The Main Street Associates, Inc.,	)	
d/b/a/ Minsky's Pizza	)	
Defendant.	)	

ORDER ON MOTION FOR JUDGMENT ON THE PLEADINGS

The Main Street Associates, Inc., d/b/a Minsky's Pizza (defendant) filed this motion to address a release that Michael Szerwinski (plaintiff) signed concerning injuries that occurred September 24, 2022. On that day, at approximately 5:51 P.M., plaintiff was operating his bicycle on 79th Street, and approaching an intersection when Michael Crocker, defendant's employee, made a left turn and collided with plaintiff's bicycle. Mr. Szerwinski signed a release that apparently was prepared by an auto insurance adjuster but that which plaintiff's counsel had a hand in editing, according to oral argument.

Defendant' submits that this release eliminates all plaintiff's claims of *respondeat superior* and negligent hiring/retention because it purportedly referenced all claims.

Procedural History

Plaintiff filed the petition on Jan. 16, 2024. Defendant filed an answer on Apr. 25, 2024, attaching the release as part of its answer. Defendant filed a motion for judgment on the pleadings on May 21, 2024. Plaintiff filed a response on June 21, 2024. Defendant filed a reply to plaintiff's response on July 12, 2024.

A1

After considering the parties' briefs and oral arguments, the Court **GRANTS** defendant's motion for judgment on the pleadings.

CONCLUSIONS OF LAW

Judgment on the Pleadings Standard

The standard for assessing a motion for judgment on the pleadings under K.S.A. 60-212(c) is as follows:

> A motion for judgment on the pleadings under 60-212(c), filed by a defendant, is based upon the premise that the moving party is entitled to judgment on the face of the pleadings themselves and the basic question to be determined is whether, upon the admitted facts, the plaintiffs have stated a cause of action. [Citation omitted.] The motion serves as a means of disposing of the case without a trial where the total result of the pleadings frame the issues in such manner that the disposition of the case is a matter of law on the facts alleged or admitted, leaving no real issue to be tried. [Citation omitted.] The motion operates as an admission by movant of all fact allegations in the opposing party's pleadings. [Citations omitted.].

Mashaney v. Bd. of Indigents' Def. Servs., 302 Kan. 625, 638, 355 P.3d 667, 677 (2015) (alterations in original) (quoting *Clear Water Truck Co. v. M. Bruenger & Co.*, 214 Kan. 139, 140, 519 P.2d 682 (1974)).

A motion for judgment on the pleadings, under K.S.A. 60-212(c) requires the moving party to demonstrate that it is entitled to judgment without allowing discovery to determine whether the plaintiff has stated a cause of action. *Clear Water Truck Co., Inc. v. M. Bruenger & Co., Inc.*, 214 Kan. 139, 140, 519 P.2d 682, 684 (1974) (*citing Tabor v. Lederer*, 205 Kan. 746, 472 P.2d 209 (1970)). "The motion serves as a means of disposing the case without a trial where the total result of the pleadings frame the issues in such a manner that the disposition of the case is a matter of law on the facts alleged or admitted, leaving no real issue to be tried." *Id.* "The motion operates as an admission by movant of all fact allegations in the opposing party's pleadings." *Id.*

When a motion to dismiss under K.S.A. 60-212(b)(6) raises issues concerning the legal sufficiency of a claim, the question must be decided from the well-pleaded facts of the petition. *Halley v. Barnabe*, 271 Kan. 652, 656, 24 P.3d 140, 143 (2001). The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in plaintiff's favor, the petition states any valid claim for relief. *Id.* Dismissal is justified only when the allegations of the petition clearly demonstrate plaintiff does not have a claim. *Id.* While all well pled factual allegations are taken as true, there is nothing that requires a court to treat any legal conclusions as true. *Duckworth v. City of Kansas City*, 243 Kan. 386, 391, 758 P.2d 201, 205 (1988).

Analysis

I. Motion for Pleading Standard Applicability

Plaintiff's reply includes an argument that the rules for summary judgment should apply here. Plaintiff first disputes the reference to the release, suggesting this is a motion for summary judgment. However, the release was attached to the answer and, therefore, it is part of the pleadings. Thus, its arguments are within the pleadings and properly referenced.

The plain language of K.S.A. 60-209, the statute on pleading special matters, states:

> (h) Pleading a written instrument. A claim, defense or counterclaim founded on a written instrument may be pleaded by:
>
> (1) Reasonably identifying the written instrument and stating its substance;
>
> (2) reciting the contents of the written instrument in the pleading; or
>
> (3) attaching a copy to the pleading as an exhibit.

K.S.A. 60-209(h).

K.S.A. 60-210 states, "(c) Adoption by reference; exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy

of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes." K.S.A. 60-210(c).

Documents attached to a defendant's answer provide a basis for a motion for judgment on the pleadings when they are central to the plaintiff's cause of action. *McCormick v. City of Lawrence, Kan.*, No. 02-2135-JWL, 2004 WL 2270003, at *1 (D. Kan. Oct. 5, 2004).

However, "when a complaint refers to an unattached document central to the plaintiff's claim, a defendant may submit—and a court may consider—an undisputedly authentic copy of the document without transforming the motion to dismiss into a motion for summary judgment." *Crosby v. Esis Ins.*, 474 P.3d 307, 2020 WL 6372266 at *2-3, (Kan. Ct. App. 2020), citing *GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384-85 (10th Cir. 1997). Here, although the petition does not refer to the document, the answer does, and, as such, it is a pleading incorporating the document as a defense.

This case is not *Cobb* where the release was not part of either party's pleadings but was instead attached to the defendants' motion to dismiss. Defendant here attached the release as an exhibit to its answer, which is a pleading as defined by K.S.A. 60-207(a)(2). Thus, the release is a part of defendant's answer and the standard of judgment on the pleadings will apply.

II. *Respondeat Superior*

Plaintiff's first claim alleges is that defendant Minsky's Pizza is vicariously liable, through *respondeat superior*, for the actions of its agent, Michael Crocker (presumably a delivery driver). Defendant, for the purposes of this motion, admitted that on September 24, 2022, at approximately 5:51 p.m., Michael Crocker was acting within the course and scope of his employment.

Defendant argues that it is not liable for Count I though because Mr. Crocker was fully released from any liability by the plaintiff. The release, signed July 12, 2023, provides:

> This Indenture Witnesseth that, in consideration of the sum of One Hundred Thousand Dollars ($100,000.00) receipt whereof is hereby acknowledged, for myself and for my heirs, personal representatives and assigns, I do hereby release forever discharge Michael Crocker and Marcia Shelby with respect to claim #0688578327, against Allstate Insurance Company under policy # 000000821589911, their heirs, executors and administrators, from the above-specified Allstate Claim, demands, damages, costs, expenses, loss of services, actions, and causes of actions arising from any act or occurrence, up to the present time, and particularly an account of all personal injury, disability, property damage, loss of services and loss or damages of any kind sustained or that I hereafter may sustain in consequence of an accident that occurred on or about the 24th day of September, 2022 at or near Lackman Rd & 79th St.
>
> … As a further consideration and inducement for this compromise settlement, that it shall apply to all unknown and unanticipated injuries and damages resulting from said accident, casualty, or event, as well as those now disclosed.
>
> … ***The said payments and settlements in compromise are made to terminate further controversy respecting all claims for damages that we have heretofore asserted or that I or my personal representatives might hereafter assert because of said accident.***

(Emphasis added.)

Defendant's primary argument is that plaintiff released any and all causes of action for his alleged personal injuries that he either previously asserted, or could assert, against Mr. Crocker, amongst others. In essence, plaintiff released defendant from any claim that defendant can be held vicariously liable for Mr. Crocker's alleged negligence.

Plaintiff argues that the release only discharged Mr. Crocker from claim #068857327 against Allstate Insurance Company under policy #000000821589911 and that any other claims plaintiff was free to assert against defendant, Mr. Crocker's employer.

Interpretation of a written instrument is a question of law. *Liggatt v. Emplyers Mut. Cas Co.*, 273 Kan. 915, 917, 46 P.3d 1120, 1120 (2002); *Marquis v. State Farm & Cas. Co.*, 265 Kan. 317, 324, 961 P.2d 1213, 1219 (1998). Courts will not rewrite a contract by construction if the terms present are clear and unambiguous. *Boos v. National Federation of State High School Associations,* 20 Kan.App.2d 517, 526, 889 P.2d 797, 804 (1995); citing *Thomas v. Thomas,* 250

Kan. 235, 244, 824 P.2d 971, 977 (1992); see also *Havens v. Safeway Stores*, 235 Kan. 226, 231, 678 P.2d 625, 629-639 (1984).

To the extent that a principal can be released from liability, a "release or covenant not to sue an agent also releases a principal who is purely vicariously liable for imputed negligence under a theory of respondeat superior." *York v. InTrust Bank, N.A.*, 265 Kan. 271, 275 Syl. 3, 962 P.2d 405, 410 (1998).

There are three primary viewpoints when interpreting general releases. There is the "flat bar rule", which looks exclusively to the four corners of the release and does not allow consideration of extrinsic evidence. *Luther v. Danner,* 268 Kan. 343, 346-47, 995 P.2d 865, 868 (2000). The majority of courts no longer use this rule. *Id.*

The specific identity rule presumes that the liability of a party not named or identified or described is not released. *Id.* 268 Kan. at 347, 995 P.2d 869. Some courts allow parol evidence of the parties' intent regarding the release even if the terms are unambiguous, while others allow parol evidence only if the court determines that the release agreement terms are ambiguous. *Id.*

The third viewpoint is the intent rule, which emphasizes that the contract principle of the parties' intent governs. The rule functions as a middle ground between the specific identity rule and the flat bar rule. *Mulroy v. Olberding*, 29 Kan. App.2d 757, 765, 30 P.3d 1050, 1055 (2001).

Kansas courts generally adhere to the specific identity rule for multiple tortfeasers, as boiler-plate release language no longer extinguishes rights and the unnamed party claiming inclusion in the release bears the burden of rebutting the presumption. *Id.* However, principal and agent relationships, such an employer and an employee, use the second interpretation of specific identity, where parol evidence is only considered when there is ambiguity, as suggested in *Davis v. Kansas City Renaissance Festival Corp*.

The two most applicable cases to this factual situation are *Cobb v. Corbett* and *Davis.*

In *Cobb v. Corbett*, a motorist brought a personal injury action against a driver, the driver's insurer, and the driver's employer based on *respondeat superior*. Cobb settled with Corbett, the individual who collided with her, and the insurance company, Farmers Insurance Company, Inc. Cobb executed a release, discharging Corbett and Farmers Insurance from "'any and all rights, claims, demands and damages of any kind, known or unknown, existing or arising in the future, resulting from or related to bodily injury arising'" from the November 2000 accident. *Cobb v. Corbett*, 32 Kan.App.2d 1184, 1185, 95 P.3d 1028, 1029 (2004).

The plaintiff later filed an amended petition against Corbett and Westaff, Corbett's employer. Cobb's legal arguments were based on *respondeat superior*, with Westaff having no independent liability. The court affirmed the trial court and found that when a plaintiff settles with and gives an absolute release to a particular defendant, the plaintiff cannot then sue and recover from the defendant's employer based on *respondeat superior*. *Id* at 32 Kan. App.2d 1185, 95 P.3d 1030.

Davis v. Kansas City Renaissance Festival Corp. 318 P.3d 1020, 2014 WL 802452 at *5 (Kan. Ct. App. Feb. 28, 2014)., distinguished *Cobb, Luther* and *Olberding*. The festival was dued among other tortfeasors but it stemmed from its employment of Jensen. *Davis*, although unpublished, is persuasive in that it addresses how courts should address the employee/employer relationship, which requires a closer adherence to the specific identity rule that only requires parol evidence if terms are ambiguous.

The *Davis* release provided: "By executing this release, I intend and agree that this release applies to all my claims arising from said accident, present and future, including ... claims for known or unknown injuries, ... and there is no misunderstanding in this regard." *Id.* at *6.

The release, the court said, unambiguously released all other potentially liable organizations. *Id.* at *8.

The intention of a releasing party determines its effect.and, to the extent the document expresses such intent, no further inquiry is needed.. *Id.* at *4, citing *Sade v. Hemstrom*, 205 Kan. 514, Syl. ¶ 4, 522, 471 P.2d 340, 341, 347 (1970); see also *Atkinson v. Wichita Clinic, P.A.*, 243 Kan. 705, 708, 763 P.2d 1085, 1087 (1988); *Reynard v. Bradshaw*, 196 Kan. 97, 101, 409 P.2d 1011 (1966).

In the Crocker release, it states that it forever discharged Michael Crocker and Marcia Shelby with respect to a specific claim against Allstate Insurance Company, but the language also discharged "their heirs, executers and administrators", personal representatives but also "demands, damages, costs, expenses, loss of services, actions, and causes of actions ***arising from any act or occurrence***", relating to "all personal injury, disability, property damage, loss of services and loss or damages or any kind sustained" or that were sustained regarding the accident. This is broad language.

The release did not limit itself to any claims against Allstate. It also released any causes of action relating back to the accident that occurred on September 24, 2022, at or near Lackman Road and 79th St. Because the rebuttable presumption in *Luther* and *Olberding* does not apply to the employer/employee relationship, only an examination of the language of the release is required.

As noted above, a release not to sue an agent also releases a principal who is vicariously liable under a theory of *respondeat superior*. *York v. InTrust Bank, N.A.*, 265 Kan. 271, 275 Syl. 3, 962 P.2d 405, 410 (1998).

Plaintiff also argues that a hold harmless agreement is a prerequisite to releasing liability of a principal, but *Davis* held that a hold harmless agreement is not required, and that the broad

language of a release is sufficient to bar a claim under *respondeat superior*. *Davis*, 318 P.3d 1020, 2014 WL 802452 at *8.

Defendant is discharged from any liability related to *respondeat* superior. This aspect of the motion is sustained.

III. Negligent Hiring

Defendant also argues also that the release is broad enough to release direct theories of negligence against the employer, which, in this case, include negligent hiring. An employer is not automatically released from liability for its own actions or omissions. *York,* 265 Kan. at 275 Syl. 3, 962 P.2d at 410. However, the release language may be broad enough to encompass all liability claims that a plaintiff could have asserted, even if the defendant was not a party to the release. *White v. Miller*, 827 P.2d 84, at *7-11 (Kan. Ct. App. Mar. 13. 1992).

Because plaintiff here has alleged that Mr. Crocker and Minsky's pizza are concurrent tortfeasers, defendant suggests it is entitled to judgment on the pleadings because Mr. Crocker's signed release was broad enough to release Minsky's Pizza, as it was in *White*.

Plaintiff argues that the language is not broad enough to release defendant. Plaintiff is correct to the extent that *White's* language is broader than defendant suggests. *White* released liability "of all persons, firms, corporations, from all claims", and here, the language was more specific.

The language here, however, is broad enough to cover Misnky's. The language of the release in relevant part, provides:

> "… I do hereby release forever discharge Michael Crocker and Marcia Shelby with respect to claim #0688578327, against Allstate Insurance Company under policy # 000000821589911, their heirs, executors and administrators, from the above-specified Allstate Claim, demands, damages, costs, expenses, loss of services, actions, ***and causes of actions arising from any act or occurrence, up to the present time, and particularly an account of all personal injury, disability,***

> ***property damage, loss of services and loss or damages of any kind sustained or that I hereafter may sustain in consequence of an accident*** that occurred on or about the 24th day of September, 2022 at or near Lackman Rd & 79th St.
>
> … As a further consideration and inducement for this compromise settlement, that it shall apply to all unknown and unanticipated injuries and damages resulting from said accident, casualty, or event, as well as those now disclosed.
>
> … The ***said payments and settlements in compromise are made to terminate further controversy respecting all claims for damages that we have heretofore asserted or that I or my personal representatives might hereafter assert because of said accident.***

(Emphasis added.) Thus, the language references all "causes of action" and "all claims for damages" which have been asserted or which he "might hereafter assert because of said accident."

Defendant's judgment on the pleading is granted in its entirety. Both the assertions of all causes of actions and any damages related to those which might have been asserted are specifically referenced and released.

The motion for judgment on the pleadings is hereby **GRANTED**.

It is so ordered.

8/29/24 /s/ David W. Hauber

Date DISTRICT COURT JUDGE, Div. 7

NOTICE OF ELECTRONIC SERVICE

Pursuant to KSA 60-258, as amended, copies of the above and foregoing ruling of the court have been delivered by the Justice Information Management System (JIMS) automatic notification electronically generated upon filing of the same by the Clerk of the District Court to the e-mail addresses provided by counsel of record in this case. Counsel for the parties so served shall determine whether all parties have received appropriate notice, complete service on all parties who have not yet been served, and file a certificate of service for any additional service made.

/s/ DWH

CLAIM # 0688578327

RELEASE OF ALL CLAIMS

This Indenture Witnesseth that, in consideration of the sum of **One Hundred Thousand Dollars ($100.000.00)** receipt whereof is hereby acknowledged, for myself and for my heirs, personal representatives and assigns, I do hereby release forever discharge **Michael Crocker** and **Marcia Shelby** with respect to claim #0688578327, against Allstate Insurance Company under policy # 000000821589911, their heirs, executors and administrators , from the above-specified Allstate Claim, demands, damages, costs, expenses, loss of services, actions, and causes of actions arising from any act or occurrence, up to the present time, and particularly an account of all personal injury, disability, property damage, loss of services and loss or damages of any kind sustained or that I hereafter may sustain in consequence of an accident that occurred on or about the **24th** day of **September, 2022** at or near **Lackman Rd & 79th St.**

To procure payment of the said sum, I hereby declare: that I am more than 18 years of age; that no representations about the nature or extent of said injuries, disabilities or damages made by any physician, attorney or agent of any party hereby released, nor any representations regarding the nature or extent of legal liability or financial responsibility of any of the parties released, have induced me to make this settlement; that in determining said sum there has been taken into consideration not only the ascertained injuries, disabilities, and damages, but also the possibility that the injuries sustained may be permanent and progressive and recovery therefrom uncertain and indefinite so that consequences not now anticipated may result from the said accident.

I hereby agree that, as a further consideration and inducement for this compromise settlement, that it shall apply to all unknown and unanticipated injuries and damages resulting from said accident, casualty, or event, as well as to those now disclosed.

I understand that the parties hereby released admit no liability of any sort by reason of said accident and that the said payments and settlements in compromise are made to terminate further controversy respecting all claims for damages that we have heretofore asserted or that I or my personal representatives might hereafter assert because of said accident.

I further understand that such liability as I, may or shall have incurred, directly or indirectly, in connection with or for damages arising out of the accident to each person or organization released and discharged of liability herein, and to any other person or organization, is expressly reserved to each of them, such liability not being waived, agreed upon, discharged nor settled by this release.

SIGNED AND SEALED THIS 13th DAY OF July 2023.

WITNESSED BY:

Haley Guynes

Mike Sterwinski

State of Missouri
County of Jackson
On this 13th day of July, 2023 before me personally appeared Mike Sterwinski to me known to be the persons who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

My commission expires 07/26/25

Haley Guynes
NOTARY PUBLIC

HALEY MADISON GUYNES
Notary Public, Notary Seal
State of Missouri
Jackson County
Commission # 21253789
My Commission Expires 07-26-2025

General Release

rev.03/13/00

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LAIM # 0688578327

RELEASE OF ALL CLAIMS

This Indenture Witnesseth that, in consideration of the sum of One Hundred Thousand Dollars ($100,000.00) receipt whereof is hereby acknowledged, for myself and for my heirs, personal representatives and assigns, I do hereby release forever discharge Michael Crocker ~~and~~ with respect to claim #0688578327, against Allstate Insurance Company under policy # 000000821589911~~any other person, partnership, firm or corporation charged or chargeable with responsibility or liability, their heirs, executors, administrators, associates, representatives, successors, and assigns~~, from ~~any and all~~the above-specified Allstate Claim ~~claims~~, demands, damages, costs, expenses, loss of services, actions, and causes of actions arising from any act or occurrence, up to the present time, and particularly an account of all personal injury, disability, property damage, loss of services and loss or damages of any kind sustained or that I hereafter may sustain in consequence of an accident that occurred on or about the 2 4th day of September, 2022 ~~5 eptember, 2 022~~ at or near Lackman Rd & 79th St.

To procure payment of the said sum, I hereby declare: that I am more than 18 years of age; that no representations about the nature or extent of said injuries, disabilities or damages made by any physician, attorney or agent of any party hereby released, nor any representations regarding the nature or extent of legal liability or financial responsibility of any of the parties released, have induced me to make this settlement; that in determining said sum there has been taken into consideration not only the ascertained injuries, disabilities, and damages, but also the possibility that the injuries sustained may be permanent and progressive and recovery therefrom uncertain and indefinite so that consequences not now anticipated may result from the said accident.

I hereby agree that, as a further consideration and inducement for this compromise settlement, that it shall apply to all unknown and unanticipated injuries and damages resulting from said accident, casualty, or event, as well as to those now disclosed.

I understand that the parties hereby released admit no liability of any sort by reason of said accident and that the said payments and settlements in compromise are made to terminate further controversy respecting all claims for damages that we have heretofore asserted or that I or my personal representatives might hereafter assert because of said accident.

I further understand that such liability as I, may or shall have incurred, directly or indirectly, in connection with or for damages arising out of the accident to each person or organization released and discharged of liability herein, and to any other person or organization, is expressly reserved to each of them, such liability not being waived, agreed upon, discharged nor settled by this release.

SIGNED AND SEALED THIS _ DAY OF _ 20_ .

WITNESSED BY:

State of
County of
On this _ day of _ _ , 20__ before me personally appeared _____ _ to me known to be the persons who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

My commission expires_ _

_ _ _

NOTARY PUBLIC

A12