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# EVALUATING RELEASES UNDER ALABAMA LAW

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As litigators, the question of whether a release is both comprehensive and legally valid probably arises more than expected when we first decided to become courtroom lawyers. With settlements dominating the world of litigation, we often find ourselves in the position of *drafting* releases instead of defending them or picking them apart. Add in that clients include various waivers and releases in contracts as a matter of course, plus related questions like whether indemnification or insurance coverage exists, and we find ourselves surrounded by contracts, and, of course, releases.

With that in mind, below is a simple reference guide to releases under Alabama law and the questions to ask when considering one.<sup>1</sup>

## I. Categories of Releases

Releases ordinarily fall into one of two buckets: general or specific. But Alabama also has some specially-named releases that exist. Those releases, such as *pro tanto* releases, are most often referred to by name instead of as “general” or “specific.” We discuss these categories of releases below.

### a. General Releases

General releases are, unsurprisingly, broader than specific releases, and are “not limited to a particular claim or set of claims, such as those at issue in a pending or contemplated lawsuit, but instead cover[] any actual or potential claim by the releasing party against the released party based on any transaction or occurrence before the release.” Black’s Law Dictionary (10th ed. 2014); *see also Irvin v. Griffin Corp.*, 808 F.2d 802, 804 (11th Cir. 1987) (“Under Alabama law, an injured party’s execution of a general release arising from a tort claim operates as a bar to any other potential claim of the party arising from the same tort.”).

Historically, in order for an Alabama court to have concluded that a release had the effect of a general release, the language needed to state that “‘any and all other persons’ or words of like effect” were released from liability. *Wittner v. Kemp*, 529 So. 2d 961, 962 (Ala. 1988); *see also Irvin*, 808 F.2d at 804 (“This is simply a reflection of the old common law rule, that one who accepts payments from one tortfeasor and executes a release, which, in express terms, releases ‘any and all persons’ is held to have discharged both the payer party as well as other tortfeasors not party to the release agreement.” (citing cases)); *Baker v. Ball*, 473 So. 2d 1031, 1034 (Ala. 1985) (holding that “and any and all other

persons, firms, corporations and parties whatever, jointly and severally, of and from any and all judgments, claims, demands, actions, causes of action, suits, costs, damages, expenses, compensation and liabilities of every kind” was sufficient to constitute a general release).

But this requirement was altered in 1989 by the Alabama Supreme Court, in recognition that these “any and all persons” words may not always reflect the intent of the parties, particularly as to unknown tortfeasors. *See Pierce v. Orr*, 540 So. 2d 1364 (Ala. 1989) (concluding that unnamed third parties technically included in release by words “any and all parties” or similar language, who did not pay consideration for their inclusion in the release, and who had no relationship in privity or otherwise with the releasee/payor, bear the burden of proof to establish that they were intended to be included in the scope of the general release); *see also Ford Motor Co. v. Neese*, 572 So. 2d 1255, 1257 (Ala. 1990) (implementing this burden and extending the holding of *Pierce* so that the burden to prove inclusion in release does not apply if the unnamed party “paid some part of the consideration for the release and is an agent, principal, heir of, assign of, or otherwise occupies a privity relationship with, the named payor.”); Ala. Code § 12-21-109 (1975) (release to have effect according to terms and intent of the parties).

Another characteristic of a general release is that “the parties obviously intend to release all claims.” *Regional Health Services, Inc. v. Hale County Hosp. Bd.*, 565 So. 2d 109, 114 (Ala. 1990) (reversing where trial court permitted conversion claim to proceed to jury trial and noting that “the trial court erred.

[] If the parties had wanted to limit the release, they could have expressly reserved and excepted certain claims, including tort claims, from the release”); *see also id.* at 114 n.2 (“Our holding today, as it relates to the release of ‘claims,’ should be distinguished from the holding in our recent case referring to ‘any and all persons.’”). Accordingly, where a release refers to “any and all claims” or similar language, Alabama courts will enforce them on the basis that they are unambiguous and “could have been limited if the parties so desired.” *Nix v. Henry C. Beck Co.*, 572 So. 2d 1214, 1216 (Ala. 1990) (releasee’s argument that release was intended to bar contract-related claims only failed where he released “any and all manner of claims, demands, damages, causes of action or suits that it might now have or that might subsequently accrue to it by reason of any matter or thing whatsoever, and particularly growing out of or in anywise

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connected with directly or indirectly, that certain contract entered into [by the parties]"); *see also Baker v. Blue Circle, Inc.*, 585 So. 2d 868, 870 (Ala. 1991) ("Having not so limited the release, Baker cannot now assert a restriction on the scope of the release that is not found within the four corners of that document.").

### b. Specific Releases

In contrast to general releases, specific releases "specifically limit[] the scope of the release, [and] the release will not bar claims outside the scope of the release." *Ex parte PinnOak Resources, LLC*, 26 So. 3d 1190, 1201 (Ala. 2009). Specific releases are not as common as general releases for the obvious reason that if a release is executed, the parties (particularly the defendant) want it to be as broad as possible to bar any future liability. Although there sometimes exists context-specific reasons for parties to enter into specific releases, a broad general release tends to be the favored route. *But see, e.g., Ex parte PinnOak Resources*, 26 So. 3d at 1201 (discussing a release with specific time frame); *Cooper v. Volvo Group North America, Inc.*, 2013 WL 12284452, at \*16 (N.D. Ala. 2013) (analyzing specific release "from any and all claims of any type or nature, whether known or unknown which have or could have been made, arising from or relating in any way to the subject trucks or their operation up to and including the date of this agreement"); *Cavender v. State Mut. Ins. Co.*, 748 So. 2d 863, 868 (Ala. 1999) (analyzing specific release and noting that "the wording emphasized here limits the release to two areas. First, any future claim relating to mistaken projections would be precluded . . . Second, any future claim relating to fraud in selling policies would be precluded").

### c. Other Releases

Other categories of releases exist in Alabama too. For example, a *pro tanto* release allows "[a] person injured by two or more joint tortfeasors [to] accept a partial satisfaction and release one or more *pro tanto*, and continue against one or more of the others." *Williams v. Colquett*, 133 So. 2d 364 (Ala. 1961). Said another way, in a suit with multiple defendants, a plaintiff can enter into a settlement agreement with one defendant, releasing that defendant from all liability, but continue against the other defendants.<sup>2</sup> Such a release is ordinarily a general release as to just one defendant, including language to make it clear that the other defendants are not released. *See, e.g., McGuffie v. Mead Corp.*, 998 F.Supp. 2d 1232, 1259 (N.D. Ala. 2014) (*pro tanto* release that included language releasing its present and former parents, subsidiaries, successors held to be unambiguous and effective). *But see, e.g., Ford Motor Co. v. Neese*, 572 So. 2d 1255, 1255 & 1258 (Ala. 1990) (affirming reformation of apparent general release into *pro tanto* release based on intent of the parties).

## II. Release Language

Although there is no magic language for a valid release under Alabama law, there are a few key buzz words to include. As noted above, if a general release is intended, one should include language that makes that intent clear, such as stating, at a minimum, that "any and all claims" are released. *See, e.g., Nix v. Henry C. Beck Co.*, 572 So. 2d 1214, 1216 (Ala. 1990) (general release effective when party released "from any and all manner of claims, demands, damages, causes of action or suits that it might now have or that might subsequently accrue to it by reason of any matter or thing whatsoever . . . It is the purpose of this release to forever settle, adjust and discharge all claims of whatsoever kind or nature."). In contrast, for a specific release, precision is key. *See, e.g., Jones v. Ruth*, 31 So. 3d 115, 122 (Ala. Civ. App. 2009) (where release listed precise claims released, claims that fell outside of the scope were permitted to proceed). Finally, a *pro tanto* release has not traditionally required an express reservation to pursue claims against other tortfeasors to be effective, so long as the proper party is alone released. *See, e.g., Grimes v. Liberty Nat. Life Ins. Co.*, 514 So. 2d 965, 968 (Ala. 1987). Nevertheless, it is common to see such reservations in these releases, particularly because a reservation *is* required in certain instances, such as when an agent is released but not the party potentially responsible for that agent's actions. *See, e.g., Hundley v. J.F. Spann Timber, Inc.*, 962 So. 2d 187, 192–93 (Ala. 2007) ("[T]he operative inquiry is whether, in the settlement agreement that precipitated that dismissal, [plaintiff] expressly reserved the right to pursue tort claims against other [related] parties.").

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## III. General Contract Principles Applied to Releases

When analyzing the validity of a release, general contract principles apply. Just like any other contract provision, a release can be ineffective if, for example, the releasor lacked the power to release or if there is no consideration. These principles are discussed below.

### a. Power to release

One of the first issues to consider when considering a release is whether the parties had the power to execute the release in the first place. For example (and, unsurprisingly) restrictions apply to minors. Minors in Alabama cannot freely enter into releases included in settlement agreements over \$5,000. When a settlement agreement is over \$5,000, court approval in the Alabama Circuit Court is required. *See Ala. Code* § 26-2A-6 (1975). Relatedly, minors are often appointed a guardian ad litem to represent the best interests of the child in negotiations, *see Ala. R. Civ. P.* 17(c), in addition to a fairness hearing to approve minor settlement agreements (including any releases). *See Large v. Haybes by and through Nesbitt*, 534 So. 2d 1101 (Ala. 1988). Although not automatically void in Alabama, the default rule is



that contracts with minors are voidable. *See J.T. ex rel. Thode v. Monster Mountain, LLC*, 754 F. Supp. 2d 1323; 1326 (M.D. Ala. 2010).

Releasees and releasors also cannot be in an impaired mental (and sometimes physical) condition when they sign their name on the dotted line. *See, e.g., McGinnis v. Continental Ins. Co.*, 628 So. 2d 470, 2 (Ala. 1993) (releasors signed in “weakened condition”). Releasees and releasors must be cognizant of his or her actions. A person that has taken medication, is seriously intoxicated, is infirm or has mental illness should be treated with caution, and extra safeguards may be necessary. If permitted to execute a release in such a state, such a release may also be voidable. *See, e.g., Taylor v. Dorough*, 547 So. 2d 536, 542 (Ala. 1989) (summary judgment reversed where releasor on medication, in pain, and in need of money).

### **b. Terms and Intent**

Alabama Code § 12-21-109 explicitly states that “all receipts, releases and discharges in writing, whether of a debt of record, a contract under seal or otherwise, and all judgments entered pursuant to *pro tanto* settlements, must have effect according to their terms and the intentions of the parties thereto.” Since *Pierce v. Orr*, 540 So. 2d 1364 (Ala. 1989), discussed above, this provision has been “accept[ed] at face value” by Alabama courts in order to “give effect to contracts of release according to the intentions of the parties.” *Id.* at 1367.

Accordingly, when drafting a release, no matter the kind, it is imperative that the drafting party effectuate his or her intent through the appropriate language. Just like other contracts, determining one’s intent in drafting a release is an objective inquiry. So, a drafting error can be detrimental to the effect of the release, regardless of actual subjective intent. *See, e.g., Minnifield v. Ashcraft*, 903 So. 2d 818 (Ala. Civ. App. 2004) (holding that release was ambiguous and noting that, “[a]lthough parties may execute an agreement that will release claims or damages not particularly contemplated, the parties’ intent to do so must be clearly expressed in the agreement.”).

### **c. Reformation**

If a release happens to contain a drafting error, another contract remedy—reformation—is an option for rectifying the error in equity. *See Wittner v. Kemp*, 529 So. 2d 961, 963 (Ala. 1988). But note that this equitable remedy has historically been available only when the original release is a general release, not a specific release. *Id.* One rationale behind this principle is that a specific release is *specific*, and a court will presume that the parties meant what they said when they intentionally limited the scope of the release. In contrast, a general release

is broad and often boilerplate, and it makes more sense in that situation to believe that perhaps the parties intended something different.

### **d. Mutual Mistake of Fact**

As with all contract provisions, a mutual mistake of fact can invalidate a release. This fact provides one more compelling reason why the terms of any release should be as precise as possible. Yet even if precise, a plaintiff may nevertheless attempt to make arguments in favor of rescission based on mutual mistake. One particular example that arises is with regard to future events or predictions. But the Supreme Court of Alabama has held that “as a matter of law, reliance on a prediction as to future events will not support a claim for rescission of a release based on a claim of mutual mistake of fact.” *Boles v. Blackstock*, 484 So. 2d 1077 (Ala. 1986).

### **e. Fraud in the Inducement**

Perhaps the most common method of attempting to invalidate a contract or release is fraud in the inducement. A release induced by fraud is void. *See Taylor v. Dorough*, 547 So. 2d 536 (Ala. 1989). “Fraud has four elements: (1) misrepresentation of a material fact; (2) made willfully to


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deceive or recklessly without knowledge; (3) which was justifiably relied upon by the plaintiff under the circumstances; and (4) which caused damage to the plaintiff as a proximate consequence.” *Ramsay Health Care, Inc. v. Follmer*, 560 So. 2d 746, 749 (Ala. 1990).  
But actually proving fraud in the inducement is a difficult hurdle to overcome. Under the justifiable reliance standard, “a plaintiff, given the particular facts of his knowledge, understanding, and present ability to fully comprehend the nature of the subject transaction and its ramifications, has not justifiably relied on the defendant’s representation if that representation is ‘one so patently and obviously false that he must have closed his eyes to avoid the discovery of the truth.’” *Id.*

### **f. Lack of Consideration**

Releases, like any other contract, consist of offer, acceptance and consideration. *Ex Parte Holland Mfg. Co.*, 689 So. 2d 65, 66 (Ala. 1996). Accordingly, a releasee must make some sort of payment or provide something of value to the releasor in exchange for the release. Absent this consideration, the release will be invalid. It is also worth noting that a release in some instances need not be in writing, but even in those rare instances, there still must be consideration. *See Deason v. Thrash*, 465 So. 2d 1118 (Ala. 1985).

#### IV. Conclusion

Releases serve an important purpose—to extinguish liability and the risk of future damages. To effectuate that purpose, we must write what we mean and mean what we write. Instead of just going through the motions when drafting a settlement agreement, we should ensure that it meets the necessary criteria discussed above. So next time you enter into a settlement agreement, don't forget to check all the boxes, and may the *release* be ever in your favor! 

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#### Endnotes

<sup>1</sup> This Article is not legal advice, and you should not rely on any facts or opinions expressed, and, to the extent permitted by law, you waive and release any claims or potential claims, now and in the future, against the authors, their firm, the ADLA (and all heirs, successors, assigns, affiliates, agents, etc.) arising out of any and everything relating to this Article in any way whatsoever for the rest of time (and after that, too).

<sup>2</sup> There are additional quirks in such a situation. Namely, the defendants who remain in the action "may plead the release as a bar to that amount paid by the released tortfeasor(s) or may place it in evidence to show payment for the injury up to the amount shown in the release." *Tatum v. Schering Corp.*, 523 So. 2d 1042, 1045 (Ala. 1988).

#### message from the executive director

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our young lawyer members. CLE approved webinars and YLS networking events are just a couple benefits we are working to put into place. If you have young lawyers in your firm, please get them engaged. Young lawyers are the future of the association. Firms from all over the state are dedicated to encouraging participation in ADLA and some go further by sponsoring the membership for young lawyers. ADLA sincerely appreciates every firm for their continued commitment to invest and support our young lawyers section.

As we move forward through the year, watch for these new changes to come your way and let us know what you think. We have other exciting things in the planning process that we are working on and hope to have implemented by the end of the year. Each member contributes to the success of our organization, without members there is no voice in our state to represent lawyers who specialize in civil defense cases. It is our hope that you continue to support ADLA and encourage the partners in your firm to join and get engaged. Joining any membership organization is a choice; we want to continue to be your choice. It's our job to earn your support and you have our commitment to give you the best value for your dues dollars.

Thank you again for trusting me to serve this organization. If you have any ideas you want to share or you need assistance, please feel free to reach out to me anytime. 2018 is shaping up to be a great year for ADLA, I hope you continue to be engaged or find a way if you are not already involved. Our members define the success of the association. I have no doubt ADLA is poised to grow in new ways, and your support will make a huge impact on the future of the association. Please make plans to bring your family to the Annual Meeting at the Perdido Beach Resort, June 21-24 in Orange Beach. ADLA will return to the Sandestin Golf and Beach Resort for the years 2019 and 2020. Online registration is now open. I look forward to seeing you soon at the beach. 