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**Settlement Agreements: Legal Requirements, Examples,  
and Practical Issues**

**Jeffrey A. Davis**

**Author Contact Information:**

**Jeffrey A. Davis  
McGinnis, Lochridge & Kilgore, LLP  
Houston, Texas 77010  
[jdavis@mcginnislaw.com](mailto:jdavis@mcginnislaw.com)  
713 615 8501**

## P r e f a c e

Often, we take a settlement agreement and release-form used by another attorney and adopt it as our own with appropriate modifications. Over time, changing case and statutory law affects these agreements. It is important to review the changing law to both improve your settlement agreements and make sure they comply with the applicable substantive requirements.

### **I. Releases Generally**

A release is a contract between parties in which one party abandons a claim or right to the party against whom the claim exists or the right may be enforced or exercised. *See Dresser Indus., Inc. v. Page Petroleum, Inc.*, 853 S.W.2d 505, 508 (Tex. 1993); 64 TEX. JUR. 3D Release § 1 (1989). A release effectively surrenders the cause of action and creates an affirmative defense. *Dresser*, 853 S.W.2d at 508.

Rules concerning the interpretation and effect of a contract apply to releases. *Pecorino v. Raymark Indus., Inc.*, 763 S.W.2d 561, 574 (Tex. App.—Beaumont 1988, no writ), *disapproved on other grounds*, *Pustejovsky v. Rapid-American Corp.*, 35 S.W.3d 643, 653 (Tex. 2000). For instance, a release must be supported by adequate consideration; there must exist mutual intent in the release's execution; the releasor must have the mental capacity to execute the release; and defenses such as mistake, misrepresentation, fraud, duress, coercion, and undue influence apply. *See, e.g., McClellan v. Boehmer*, 700 S.W.2d 687 (Tex. App.—Corpus Christi 1985, no writ); *see generally* 64 TEX. JUR. 3D Release. Certain statutes also may add minimum requirements. *See, e.g., Older Workers Benefit Protection Act of 1990*, 29 U.S.C. § 626(f) (1998).

#### **A. Consideration**

Like any contract, valid consideration must support, and should be recited within, a release agreement. *Flatt v. Hill*, 379 S.W.2d 926, 928 (Tex. Civ. App.—Dallas 1964, writ ref'd n.r.e.). Consideration sufficient to support a release must consist of either a benefit to the releasor or a detriment to the person released. *Atkins v. Womble*, 300 S.W.2d 688, 702-03 (Tex. Civ. App.—Dallas 1957, writ ref'd n.r.e.). The amount of consideration given for a release will not invalidate the release, so long as the consideration has some value. *Boehmer*, 700 S.W.2d at 693-94. Parties to a release, however, must be aware of minimum statutory requirements. *See, e.g., Sneed v. Sneed's Shipbuilding, Inc.*, 545 F.2d 537, 539 (5th Cir. 1977) (indicating that the Fair Labor Standards Act prohibits consideration from being an amount less than what the employee is lawfully owed under the statute). A party does not have to give independent consideration *and* be named in a release to be released from liability. *Frazer v. Texas Farm Bureau Mut. Ins. Co.* 4 S.W.3d 819, 824 (Tex. App.—Houston [1st Dist.] 1999, no pet.). "Consideration may be given by either the promisee or by some other person to either the promisor or some other person." *Id.*

## **I. Parties Released**

### ***A. No Unity of Release in Texas—need name or specific identification of releasee***

Under the former “unity of release” rule, the release of a named tortfeasor operated to release any and all other unnamed tortfeasors. *McMillen v. Klingensmith*, 467 S.W.2d 193, 194-95 (Tex. 1971). In *McMillen*, the Supreme Court of Texas abolished the “unity of release” rule in favor of the “simple” rule that “a release of a party or parties named or otherwise specifically identified fully releases only the parties so named or identified, but no others.” *Id.* at 196. Thus, a release of one tortfeasor does not release other joint tortfeasors unless such tortfeasors are “named or otherwise specifically identified” in the release. *Id.*

Many of the cases addressing this legal concept refer to “tortfeasors.” Of course, immunity from torts is generally available to school districts and many employees. However, some cases apply this rule in circumstances that do not appear to be limited to tort claims. For that reason, this rule should be considered and respected in preparing settlement agreements involving the release of any and every type of claim.

### ***B. Specific Identification—particular description of identity or connection with event***

The *McMillen* specific-identification requirement is not met “unless the reference in the release is so particular that ‘a stranger could readily identify the released party.’” *Duncan v. Cessna Aircraft Co.*, 665 S.W.2d 414, 419 (Tex. 1984) (quoting the lower appellate court’s language in *Duncan v. Cessna Aircraft Co.*, 632 S.W.2d 375, 381 (Tex. App.—Austin 1982). “[T]he mere naming of a general class of tortfeasors in a release does not change the liability of each member of that class. A tortfeasor can claim the protection of a release only if the release refers to him by name or *with such descriptive particularity that his identity or his connection with the tortious event is not in doubt.*” *Id.* at 419-20 (emphasis added); *see also Dean v. Lowery*, 952 S.W.2d 637 (Tex. App.—Beaumont 1997, pet. denied) (holding, in a suit arising from a car accident, that plaintiff could pursue a negligent entrustment claim against the father of the defendant driver because the settlement release named only defendant driver and did not name defendant’s father nor provide some description of the father’s connection to the car accident). Texas law does not require, however, that all parties *releasing* claims because of one party’s injuries be specifically named in the release. *McClellan v. Boehmer*, 700 S.W.2d 687, 690, 692 (Tex. App.—Corpus Christi 1985, no writ) (citing *Thompson v. Fort Worth & Rio Grande Ry. Co.*, 87 Tex. 590, 80 S.W. 990 (1904), for the proposition that decedent’s release barred any subsequent survival or wrongful death action by decedent’s statutory beneficiaries).

#### **1. Insufficient General Identifications: “All other corporations, firms or persons”**

A release that generally refers to “any corporations” or “any persons responsible” or “all other persons, firms, or corporations” is insufficient to meet the *McMillen* specific-identification requirement. *Duncan*, 665 S.W.2d at 419; *Bowman v. Charter Gen. Agency, Inc.*, 799 S.W.2d 377, 379 (Tex. App.—Texarkana 1990, writ denied) (finding the phrase “all other persons, firms, or corporations” insufficient to specifically identify parties other than those named); *Stone v. First City Bank of Plano*, 794 S.W.2d 537, 541 (Tex. App.—Dallas 1990, writ denied) (finding

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