

STATE OF MICHIGAN  
IN THE SUPREME COURT

ORIGINAL

THOMAS JOHN SHAY,

Plaintiff-Appellant,

vs.

JOHN ALDRICH, WILLIAM PLEMONS,  
and J. MILLER,

Defendants-Appellees,

and

ALLEN PARK POLICE OFFICERS  
ALBRIGHT and LOCKLEAR,

Defendants.

Supreme Court Docket  
No: 138908

Court of Appeals Docket  
No: 282550

Lower Court (Wayne Cty)  
No: 06-608275-NZ

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**PLAINTIFF'S SUPPLEMENTAL BRIEF IN SUPPORT**  
**OF APPLICATION FOR LEAVE TO APPEAL**  
**[RE: ROMSKA v OPPER, 234 MICH APP**  
**512 (1999)]**

**PROOF OF SERVICE**

138908  
PLAT'S SUPPL

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STATEMENT OF QUESTIONS PRESENTED

- I. IF VIEWED AS ADOPTING THE “FLAT BAR RULE”, BY WHICH A GENERAL RELEASE IS CONCLUSIVELY CONSTRUED TO DISCHARGE ALL POTENTIAL TORTFEASORS WITHOUT REGARD TO THE ACTUAL INTENT OF THE SETTLING PARTIES, OR WHICH EXCLUDES CONSIDERATION OF ADDITIONAL EVIDENCE OF THE INTENT OF THE CONTRACTING PARTIES, WAS *ROMSKA v OPPER*, 234 MICH APP 512; 594 NW2d 853 (1999) INCORRECTLY DECIDED?

**Plaintiff-Appellant answers “YES”.**

- A. WAS *ROMSKI* INCORRECTLY DECIDED, AND SHOULD THIS COURT ADOPT AN “INTENT RULE” IN CONSTRUING RELEASES, BY WHICH THE ACTUAL INTENT OF THE PARTIES IS CONTROLLING, AND THAT INTENT IS DETERMINED FROM ALL AVAILABLE EVIDENCE?

**Plaintiff-Appellant answers “YES”.**

- B. SHOULD A SUGGESTED CONSTRUCTION OF MCLA 600.2925d, THE “INTENT” RULE, IN A SETTLEMENT PURSUANT TO THE CASE EVALUATION PROCEDURE, MCR 2.403, BE CONSIDERED BY THIS COURT?

**Plaintiff-Appellant answers “YES”.**

## STATEMENT OF FACTS

### Introduction

By Order of October 14, 2009, this Court has directed the Clerk to schedule oral argument on Plaintiff's Application for Leave to Appeal ("Application").

That Order also directs:

"The parties shall submit supplemental briefs within 42 days of the date of this Order addressing whether *Romska v Opper*, 234 Mich App 512 (1999), was correctly decided. The parties should not submit mere restatements of their application papers."

In response to that directive, Plaintiff-Appellant Thomas Shay ("Plaintiff" or "Shay") now files this Supplemental Brief.

### The Background Facts

The background facts are laid out at pp. 1-14 of Plaintiff's Application. For present purposes an abbreviated version will suffice.

This suit arises out of the beating of Shay by Melvindale police officers, Defendants-Appellees Plemons, Aldrich, and Miller. Two Allen Park police officers, Locklear and Albright, were present and did not intervene.

The case proceeded to case evaluation. Plaintiff and the Allen Park officers accepted evaluations of \$12,500 against each. The case evaluation of

\$1,450,000 against the Melvindale officers, represented by different counsel, was rejected (Ex. 5).<sup>1</sup>

Seeking to avoid entry of a judgment, but to settle the case in accord with the case evaluation acceptance, the attorney for the Allen Park officers asked to have the settlement accomplished by a Release and Stipulation and Order for Dismissal (Ex. 6). Plaintiff's counsel agreed to this accommodation. The settlement check was sent with a cover letter noting the "Release . . . referable to my clients, Allen Park Police Officers Wayne Albright and Allen Park Officer Kevin Locklear" (Ex. 7). The Stipulation (Ex. 10) and Order (Ex. 11) dismissed the Allen Park officers "only", and the Order noted that, "it does not release the last pending claim (Ex. 11); *i.e.* the suit remained pending against the Melvindale officers. Counsel for the settling Allen Park officers has since confirmed (Ex. 12, ¶ 8):

"My only intent with regard to the Release, Settlement and Order of Dismissal was to release my clients, defendant Allen Park police officers Albright and Locklear, from liability in this matter for the consideration of the \$25,000.00 Case Evaluation Award."

### The Language Of The Release

Two documents captioned "Releases of All Claims and Indemnity

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<sup>1</sup> References to Exhibits identify the numeric Exhibits attached to Plaintiff's Application for Leave.

Agreement for Derivative Claims” were executed, one naming each of the two Allen Park officers; otherwise identical (Ex. 7, Ex. 8). In addition to a recital regarding the compromise of all injuries (¶ 2), a recital that the payment was to be made by the insurer, not the individual officers (p. 2), and directions regarding payment (p. 2), the Release contains three substantive provisions here in issue (with pertinent language underlined and with bold face and capitalization in the original). The first provides:

“For the sole consideration of TWELVE THOUSAND FIVE HUNDRED AND NO/100 (\$12,500.00) DOLLARS to me<sup>2</sup> in hand paid by Michigan Liability and Property Pool do for ourselves, executors, administrators, successors, and assigns, discharge, ALLEN PARK POLICE OFFICER KEVIN LOCKLEAR and Michigan Municipal Liability and Property Pool, insurer, together with all other persons, firms and corporations, from any and all claims, demands and actions which I have now or may have arising out of any and all damages, expenses, and any loss or damage resulting from an incident occurring on September 8, 2004.”

Another paragraph contemplates suit for indemnity or contribution against, “the parties herein released” by “any other parties”.<sup>3</sup> Only in the event of such a liability (“to the extent that such other parties are or may be entitled to recovery”)

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<sup>2</sup> While the form uses both the singular (“to me”) and plural (“for ourselves”), the sole signator (besides a witness and notary) was Mr. Shay.

<sup>3</sup> The “Release” does not state whether the “other parties” referred to means those not “parties” to the Release or “other parties” to the lawsuit, *i.e.* the Melvindale Defendants.

would the Release satisfy Plaintiff's claims against those "other parties":

**"IT IS FURTHER AGREED** that in the event the parties herein released may be liable, by way of contribution, indemnity, lien or otherwise, to any other parties as a result of this incident, that the execution of this agreement shall operate as a satisfaction of my claims against such other parties to the extent that such other parties are or may be entitled to recover, by way of contribution, indemnity, lien or otherwise, from the parties herein released."

Another provision discusses indemnification, likewise contemplating claims against the settling Allen Park officers by others. The agreement to release and hold harmless is provided only to, "the above-named released and discharged parties" and their related entities:

**"IT IS FURTHER AGREED** that the undersigned agrees to indemnify and save harmless the parties herein released from all further claims or demands, costs or expenses arising out of the damages sustained.

The undersigned further specifically agrees for and in consideration of the payment made hereunder that the undersigned shall indemnify and hold harmless the above-named released and discharged parties, and/or their executors, administrators, successors, assigns, heirs, agents, employers, firms, employees, corporations, partnerships from and for any and all damages, liens, legal fees or expenses, fees and costs, actual attorney fees, judgments, verdicts or awards, demands, rights, causes for action, losses and claims."

### Trial Court Proceedings

The Melvindale officers moved for summary disposition, arguing, in substance, that the settlement between Plaintiff and the Allen Park officers had the effect of releasing the claims against the Melvindale officers as well. That motion was denied (see Ex. 13, 14, 15, 16, 17). When Defendants sought interlocutory Court of Appeals review, Plaintiff filed a Motion for Reformation of the Release (Ex. 18).

### Court of Appeals Proceedings

Before the Motion for Reformation could be decided, the Court of Appeals issued an Order granting leave to appeal and staying trial court proceedings (Ex. 20). On full review, the Court of Appeals (Judges Jansen, Meter, and Fort Hood) reversed the denial of summary disposition (Ex. 1). Relying heavily on *Romska v Opper*, 234 Mich App 512; 594 NW2d 853 (1999), the Court cited the “all other persons” language of the Release and held that the Melvindale Defendants were released by the settlement between Plaintiff and the Allen Park officers.

### Supreme Court Proceedings

In due course, Plaintiff filed his Application for Leave to Appeal. He argued that, if *Romska* were construed to require that all other indicia of the actual intent of the settling parties be ignored, and that claims against strangers to the settle-

ment must be deemed released, whenever a release uses general or omnibus language in one clause, then *Romska* was erroneously decided (Application, pp. 15-29). Alternatively, he argued that this case is distinguishable in several outcome-determinative respects (Application, pp. 30-49).<sup>4</sup>

The Court has now issued its Order requesting supplemental briefing regarding the correctness of *Romska*. This Supplemental Brief is filed accordingly.

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<sup>4</sup> In particular, Plaintiff has argued that, because the parties in this case did not include a “merger” clause, unlike *Romska*, there is no contractual prohibition against consideration of other evidence of intent (Application, pp. 30-33). Moreover, he claims that the Release is internally inconsistent or ambiguous, permitting consideration of other evidence of intent (Application, pp. 33-42). Additionally, since Plaintiff and the Allen Park officers had a pre-existing duty to settle for \$25,000 after acceptance of the case evaluation, there was no additional consideration to support release of the Melvindale Defendants (Application, pp. 42-45). Finally, the equitable doctrine of “reformation” is available to reform the literal language of the Release to comport with the actual intent of the contracting parties (Application, pp. 45-49).

Plaintiff continues to believe that even if the Court adheres to *Romska*, it should grant leave and reverse on these alternative grounds. However, in view of the Court’s Order, this Brief will focus on the *Romska* question.

## ARGUMENT

- I. IF VIEWED AS ADOPTING THE “FLAT BAR RULE”, BY WHICH A GENERAL RELEASE IS CONCLUSIVELY CONSTRUED TO DISCHARGE ALL POTENTIAL TORTFEASORS WITHOUT REGARD TO THE ACTUAL INTENT OF THE SETTLING PARTIES, OR WHICH EXCLUDES CONSIDERATION OF ADDITIONAL EVIDENCE OF THE INTENT OF THE CONTRACTING PARTIES, *ROMSKA v OPPER*, 234 MICH APP 512; 549 NW2d 853 (1999) WAS INCORRECTLY DECIDED

An initial question arises as to the true meaning of *Romska* and whether it is distinguishable in significant respects from the instant case. Plaintiff has contended that this case is reconcilable with *Romska*, yet should yield a different outcome because of one or more of the following distinguishing characteristics (Application, pp. 12-13, 30-49):

- Unlike *Romska*, the releases involved in this case did not include a “merger” or “integration” clause excluding consideration of other writings or parol evidence;

- Unlike *Romska*, the Releases involved in this case were ambiguous, and contemplated a contribution suit against the settlors by the unnamed co-Defendants;
- Unlike the release in *Romska*, the Release in this case was not based on “consideration”, as the settling Defendants had a pre-existing duty to pay the settlement amount based on the mutual acceptance of the case evaluation;
- Unlike *Romska*, in this case the equitable remedy of reformation was, or should have been, available to bring the writing into conformance with the intent of the settling parties.

The Court of Appeals deemed *Romska* controlling despite these distinctions. In net effect, it construed *Romska* as holding that the “general release” language “all other parties” must be conclusively construed to discharge all potential tortfeasors (including co-Defendants in a pending suit not named in the Release), without regard to the actual intent of the settling parties and without consideration of other evidence

of intent (despite the lack of a merger or integration clause), even if the Plaintiff and settling Defendants were already required to settle the case between themselves (but not with the non-settling co-Defendants) by mutual case evaluation acceptance. If that is an accurate construction of the meaning of *Romska*, then *Romska* was incorrectly decided.

**A. ROMSKA WAS INCORRECTLY DECIDED, AND THIS COURT SHOULD ADOPT AN “INTENT RULE” IN CONSTRUING RELEASES, BY WHICH THE ACTUAL INTENT OF THE PARTIES IS CONTROLLING, AND THAT INTENT IS DETERMINED FROM ALL AVAILABLE EVIDENCE**

As framed by the *Romska* majority and dissent, the issue decided was whether a general release, containing “. . . all . . .” language, should be construed under the broad “flat bar rule” (that the release bars all other claims, regardless of the actual intent of the parties to the settlement), the intermediate “intent” rule (which construes the release in accord with the actual intent of the settling parties, determined by evidence including, but not limited to, the release itself), or the restrictive “specific identity” rule (by which only those specifically named in the release are released). The *Romska* majority [Judge (now Justice) Markman and Judge Saad] adopted the “flat

bar” rule, while Judge Hoekstra advocated the “intent” rule.

The *Romska* majority based its decision on several arguments:

- The release in that case included a merger clause precluding resort to extraneous evidence (**234 Mich App at 516**);
- The language in the release was unambiguous, thereby precluding consideration of other evidence (**234 Mich App at 516**);
- The intent of the settling parties can only be determined from the “all” clause standing alone (**234 Mich App at 517**);
- The parties presumably wished to release others to avoid the possibility of a suit for contribution by other tortfeasors against the settlor (**234 Mich App at 518**); and
- **MCLA 600.2925d** does not have any significance to the controversy (**234 Mich App at 519-520**).

The *Romska* dissent also cited several reasons in support of its position:

- The “flat bar” rule is a throwback to the now-discredited common law view that settlement with one tortfeasor barred suit against all (**234 Mich App at 525**);
- The “actual intent” approach was adopted by the American Law Institute in a Restatement draft (**234 Mich App at 525**);
- **MCLA 600.2925d** expressly abrogated the common law rule on which the “flat bar” approach is based by providing that the release “does not discharge any of the other tortfeasors from liability . . . unless its terms so provide” (**234 Mich App at 527**);
- It is fundamentally unfair to deprive a plaintiff of a cause of action based on the legal fiction that boiler plate language displaces the actual intent of the settling parties (**234 Mich App at 528**); and
- The “intent” rule was that adopted by the Supreme Court of the United States (**234 Mich App at 529-**

532).

The competing decisions in *Romska* do an excellent job of identifying the reasons for and against the alternative approaches. Likewise, both Opinions cite the sister State authorities and treatise writers arrayed in support of the three approaches. In short, the *Romska* Opinion itself provides a thorough discussion of the arguments on each side of the proposition.

In his Application, Plaintiff has discussed why the *Romska* majority view should be rejected by this Court (Application, pp. 18-27). Heedful of the admonition in this Court's Order of October 14, 2009, "The parties should not submit mere restatements of their application papers", Plaintiff augments his prior arguments with the following comments.

Of the observations made by the *Romska* majority, some do not address the heart of the dispute. For example, the Court noted that the release was "valid" because based on consideration<sup>5</sup> (234 Mich App at 516).

Other points made by the majority in *Romska* are inapplicable to the

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<sup>5</sup> Here, Plaintiff presents a viable argument that there was no "consideration" for the release, particularly if viewed as releasing the Melvindale officers, because of the acceptance of the case evaluation and preexisting duty rule. In all events, whether there was "consideration" for releasing the settling parties is a different issue than whether that release is construed as extending to unnamed strangers to the transaction who paid no consideration.

instant case. Here, there was no “merger” clause by which the parties foreswore reliance on other documents; indeed, they chose not to exclude other evidence in this fashion. At least arguably (see Application, pp. 33-42), the Release as a whole was ambiguous. In *Romska*, “there [were] not multiple documents that must be read in conjunction with one another” (234 Mich App at 521). Here, the Release was part of an overall transaction that included the case evaluation acceptance, correspondence between counsel, and a stipulated dismissal Order which dismissed only the Allen Park officers.

As pointed out previously (Application, pp. 25-26), the *Romska* majority’s concern over a contribution suit is legally and factually unfounded, at least in the *Shay* case. Legally, by reason of MCLA 600.2925d and the abolition of joint and several liability, the settling officers could not be sued for contribution by the non-settling Melvindale officers. Factually, here the parties specifically contemplated a contribution suit (Ex. 8, 9; ¶¶ 3,4). The provision for a contribution suit means that: they did not intend to release the Melvindale officers (if they did mean to dismiss the case against those officers no contribution suit would be possible), and, the Release need not be construed to release the Melvindale officers on the assumption that doing so would be necessary to accomplish the intent to spare the settlors from being sued for

contribution.

The remaining *Romska* majority rationale is that the sole determinant of “intent” is the literal meaning of the term “all”, viewed in isolation, and that the result is not influenced by **MCLA 600.2925d**. In addition to the response made by *Romska* dissent and in Plaintiff’s Application, a few additional comments are in order.

The *Romska* majority is correct, at least to a degree, in concluding that **MCLA 600.2925d(a)** does not dictate, conclusively, the required outcome. It provides that non-settlors are not released “unless its terms so provide”. The current controversy is over whether the “terms so provide”, *i.e.* what rule of construction is employed. Both the *Romska* majority and dissent believed that their rule of construction was to be used, and that the “terms” [as construed by their rule of construction] in fact “so provide”.

However, the *Romska* majority overstates the case in regarding the statute as meaningless. Minimally, it renounces the common law fiction of “release of one automatically releases all”. The “flat bar” rule accomplishes indirectly what the discredited common law approach accomplished directly. And, the statute bespeaks a broader policy that releases are not to be construed any more broadly than is absolutely required. Thus, the statute, while not itself determinative, establishes a *de*

*facto* presumption against the release of non-settlors and a policy judgment requiring specific “terms” of release to overcome the presumption. The *Romska* approach, then, contravenes the spirit of the statute, even if it can be arguably reconciled with the letter.

The core of the dispute may be framed as follows. The *Romska* majority claims to seek “intent” but narrows the search to a single word or clause in a single document. The *Romska* dissent seeks actual intent as discerned from all available evidence. The difference is starkly underscored by the facts of this *Shay* case. The true intent of the settling parties cannot seriously be disputed. They sought to settle Plaintiff’s claims against the Allen Park officers for the amount of the case evaluation, in a format that didn’t result in a judgment, while permitting Plaintiff to proceed against the Melvindale officers. Under the approach and reasoning of the *Romska* majority, the literal meaning of the phrase “all other parties” is conclusive and displaces or supersedes all the other evidence which shows, beyond any real dispute, the actual intent of the parties who negotiated the settlement and Release.

In this sense, the dispute may be viewed as a fundamental clash over the more general principles for construing contracts. As Plaintiff has previously argued, the foremost principle of contract construction is that the actual intent of the contracting parties is controlling, and all rules of construction should be subordinate.

More narrowly, this case and *Romska* involve a specific type of contract, a release. The nature of such a contract, the historical treatment, the current statutory gloss, the litigation setting in which a release arises, and the unique public policies surrounding the settlement of lawsuits and administration of the courts suggest an approach specific to releases which may or may not coincide precisely with more general features of contract law.

Those policies are implicit in **MCLA 600.2925d**. They are also adverted to by the *Romska* dissent. In short, settlements, especially under the case evaluation process, serve an important role in the legal process. Rules governing the effect of settlements or releases should encourage settlement by not inflicting on those who settle the unintended loss of other claims which may far exceed in value those being settled. **MCLA 600.2925d** expresses that policy of avoiding the unintended release of tortfeasors through inadvertence or the boilerplate language from releases first used decades ago when the Michigan law of contribution was much different. In the specific context of settlement agreements and releases, this Court should disavow a “flat bar” rule which would release strangers to the transaction who the contracting parties did not intend to release. Instead, the Court should adopt the “actual intent” approach by which the intent of the contracting parties - - determined from all avail-

able evidence, including related documents (at least in the absence of a “merger” clause)

- - is controlling.

**B. A SUGGESTED CONSTRUCTION OF  
MCLA 600.2925d, THE “INTENT”  
RULE, AND A SETTLEMENT PUR-  
SUANT TO THE CASE EVALUATION  
PROCEDURE, MCR 2.403**

As discussed above, Michigan should adopt the “intent” rule for construing releases. Under that rule, a general release is to be construed as releasing only those who the settling parties intended to release. To determine that intent, the Court should consider all available indicia of intent, including (at least in the absence of a “merger” clause) the background of the disagreement, related writings, the negotiation history, and the testimony of the settling parties. In light of the interplay between **MCLA 600.2925d**, the purpose of the “intent” rule, and the provisions of **MCR 2.403** in the case evaluation process, Plaintiff suggests the following approach in applying the “intent” rule.

(1) Settlement To Effectuate A Case  
Evaluation Acceptance

This case involves a settlement in the amount of, and to effectuate, a case evaluation acceptance between some, but not all, of the parties. In cases of this

nature, the fact that the plaintiff and non-acceptor did not agree on a case evaluation resolution convincingly shows no actual intent to release the non-acceptor for free. If it is truly intended that the mutual acceptance will result in dismissal of the suit against the non-settlers as well, that intent can be accomplished by a separate stipulated order of dismissal identifying the intentionally dismissed non-settlor by name. Otherwise, a release negotiated between two case evaluation acceptors should not be construed to release the non-accepting defendant, even if it uses broad language.

Accordingly, in this context, the outcome is dictated by **MCR 2.403(L) (a) and (b)**. Absent a separate dismissal agreement, a settlement effectuating a case evaluation acceptance, including a release, resolves only the claims between the parties who mutually accept. To release a non-accepting party, a separate settlement agreement, or a stipulated order of dismissal by which the non-acceptor is explicitly released by name, is required.

(2) **Settlement Between Some, But Not All, Of The Parties To A Pending Suit**

Where a suit is already pending, the parties already know who is a participant in the fray. If the settlers intend dismissal of one who is already a defendant, it is to be expected that the negotiated release will identify that party by name. And,

it is to be expected that an intended settlement of that type will involve an order dismissing that known co-defendant by name. Conversely, in settling an injury suit, the plaintiff and settling defendant do not ordinarily intend to gratuitously dismiss a non-settling co-defendant without saying so explicitly. For this setting, Plaintiff suggests the following rule.

In the context of a pending suit, a settlement or release obtained by some defendant(s) dismisses the claims only against those released by name. Otherwise, the settlement and release, including a general release, do not dismiss the claims against other un-named defendants.

(3) Settlement By A Defendant To A Lawsuit Releasing Others Not Parties To The Suit

Unlike this case, *Romska* involved a release which was deemed to include unnamed others who were not parties to an ongoing suit. This setting provides the most troublesome for applying the “intent rule”.

On the one hand, as in other contexts, the law should not presume or lightly infer the release of unidentified persons who the settling parties did not actually intend to be within the scope of the release. On the other hand, a settlor may wish to pretermitt litigation against related persons or entities to whom the settlor is

financially linked. As an example, a company charged with liability for a defective product may wish to secure the release of all employees who might be sued for the defect; for example, past and present design engineers, executives, marketing personnel, and safety personnel. Within narrow limits, the “intent rule” should permit the release of intended (albeit unnamed) related persons and entities, without saddling settlors with unintended consequences.

Plaintiff suggests that the “intent rule” be augmented by the following presumptions, rebuttable upon proof that the actual intent of the settling parties (gleaned from all available evidence) was different. First, in a release by a settling injured party, those having a defined relationship to the settling tortfeasor are deemed released by language releasing a class of which they are a member, if the settling parties should reasonably have anticipated that the person was within that class<sup>6</sup> and the settling tortfeasor has an economic relationship with that party giving the settlor an

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<sup>6</sup>The “reasonably anticipated member of the class” criterion seeks to distinguish between persons the plaintiff may be presumed to intend to be released and those who will not be assumed to be within the parties’ intent. For example, in an auto accident case involving first and third party claims, a settlement of first party claims in which “agents” of the insurer are released would presumably include adjustors who allegedly mis-handled a PIP claim. However, similar language would not include the other driver, against whom a third party action exists, yet by happenstance, and unknown to the plaintiff, has the same insurer.

economic incentive to secure a release of that party.<sup>7</sup> Second, where the person claiming to be released is not named, or is in a broad class (*i.e.* “all persons”) which does not have financial ties to the settling tortfeasors, or could not reasonably have been anticipated to be in the class (*e.g.* if the settlor has a secret agreement to indemnify the putative releasee), the release is presumed not to include that person.

Subject to these rebuttable presumptions, the ultimate question is the actual intent of the settling parties. If they actually intended that a third party be released, the settling documents are to be construed accordingly. If they did not so intend, the paperwork should not be construed as creating an unintended release. In all events, the intent of the settling parties is paramount and is to be determined from all available evidence, primarily (but not necessarily exclusively) by the language used.

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<sup>7</sup> The “financial relationship” test is meant to effectuate the intuitive belief that a settlor may wish, and the plaintiff may expect, that related entities and persons, such as employees and affiliated companies, are within the scope of the mutually understood settlement. Without a financial link, neither the settling plaintiff nor the settling defendant would ordinarily expect that a stranger was being gratuitously released. While the express language and other available evidence may dictate otherwise in a particular case, the “financial relationship” criterion would seem to express the presumed expectations of settling parties generally.

**RELIEF SOUGHT**

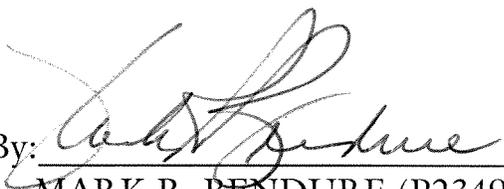
**WHEREFORE** Plaintiff prays that this Honorable Court grant the Application for Leave to Appeal and, on full review, reverse the Opinion of the Court of Appeals and affirm the decisions of the Circuit Court; remand for trial on the merits of Plaintiff's causes of action against the Melvindale officer Defendants; and allow Plaintiff the taxable costs and attorney fees of appellate proceedings.

Respectfully submitted,

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Dated: November 13, 2009