Torts: *Moss v. City of Oklahoma City* Marks the Demise of the General Tort Liability Release

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**I. Introduction**

Under common law, a release of one joint tortfeasor effectively releases any other potentially liable parties, irrespective of the releaser's intent. Presently, however, most courts and state legislatures have turned away from this rigid rule and have implemented more equitable approaches to general liability releases. Nationally, the approaches currently taken by the courts diverge into three separate rules: the "complete bar" rule, the "specific identity" view, and the "intent" rule. Many state legislatures have also spurned the harsh common law rule through the adoption of various forms of the Uniform Contribution Among Tortfeasors Act (UCATA).

Likewise, Oklahoma attempted to remedy the ill effects of the common law rule by the enactment of title 12, section 832(H)(1) of the Oklahoma Statutes, which provided that a release of one tortfeasor will not operate to discharge other tortfeasors "unless its terms so provide." Clearly, the intent of the Oklahoma legislature in adopting this provision was to depart from the common law rule; yet the Oklahoma legislature's intent in drafting the phrase "unless its terms so provide" remained anything but clear. The evasive answer to this question prompted the Oklahoma Supreme Court case of *Moss v. City of Oklahoma City*. Unfortunately, the *Moss* court's unconvincing response to this question hardly seems to resolve the issue of legislative intent and instead creates a myriad of more disturbing questions.

This note reviews both the common law and modern approaches to general tort liability releases. Further, by examining the past and present approach of the Oklahoma courts on such releases, this note will reveal the inconsistencies of the Oklahoma Supreme Court's recent decision in *Moss*. Finally, this note discusses the unfortunate ramifications that will likely flow from the *Moss* decision.

**II. Common Law Approach to General Liability Releases**

The early legal history surrounding general liability releases reflected a strict rule that often had harsh consequences on an injured plaintiff. Based on the formalistic view that a release extinguished the cause of action to which it was related, the common law rule provided that a release of one joint tortfeasor released all other liable parties, regardless of the intent of the parties. In keeping with this rule, at common law, a release by an injured person to one party acted to release all

1. See Western Express Co. v. Smeltzer, 88 F.2d 94, 95 (6th Cir. 1937).
4. See id. at 283.
prospective tortfeasors, absent a statement in the release indicating otherwise.\(^5\)

Courts that followed the common law rule rationalized that, where multiple tortfeasors collectively caused an injury, the act of one became the act of all; thus, each participant could be held liable for the plaintiff's entire loss.\(^6\) However, critics soon reproached the severe common law rule on the ground that it yielded harsh results without any rational basis.\(^7\) More specifically, some courts rejected the common law view because it forced an injured party to forfeit his entire claim against another without full compensation.\(^8\)

In response to the harshness of the common law rule, courts departed from this rule and sought less stringent alternatives. Certain courts alleviated the severity of the common law rule by creating the option that an injured party could enter into a covenant not to sue with a tortfeasor instead of signing a release relieving the tortfeasor from further damages.\(^9\) Additionally, other courts softened the common law rule by treating a release containing a reservation of rights against another as a covenant not to sue, which would not release all other potentially liable parties.\(^10\)

Moreover, state legislatures also withdrew from the common law rule by enacting statutes modeled after the UCATA.\(^11\) In 1978, the Oklahoma legislature incorporated part of the UCATA into title 12, section 832 of the Oklahoma Statutes.\(^12\) Significantly, Oklahoma amended its version of the UCATA in 1980, adding the provisions of sections 832(H)(1) and 832(H)(2):

H. When a release, covenant not to sue or a similar agreement is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

1. It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

2. It discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor.\(^13\)

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8. The Ohio Supreme Court succinctly criticized the common law by recognizing that:

The injustice of the traditional rule was that it frequently acted to extinguish a cause of action which was only partly compensated, even though the parties themselves had no such intention. The rule also made it very difficult for a claimant to settle a claim by partial settlements with several persons who were jointly liable for his injury.


9. See Moss, 897 P.2d at 263.

10. See id.


In fact, the significance of the Oklahoma legislature's addition of section 832(H)(1) cannot be overstated, as this provision presented the Oklahoma Supreme Court with the task of determining the effect of the provision on a general liability release. This issue sparked the Moss case and marked the end of the general liability release in Oklahoma. While this specific question proved to be one of first impression for the Moss court, Oklahoma law prior to section 832(H)(1) was well settled. Indeed, examination of Oklahoma law prior to the amendment makes the Moss decision that much more startling.

III. Oklahoma Law Prior to the Case

In Brown v. Brown, the Oklahoma Supreme Court held that a release discharging a named person, coupled with language purporting to release all other persons, precluded the plaintiff from thereafter suing any other parties. In Brown, the plaintiff signed a release relieving a named person and "all other persons, firms or corporations who are or might be liable, from all claims of any kind or character" arising from an automobile accident in which plaintiff was involved. Subsequently, the plaintiff attempted to sue the defendant on a cause of action arising out of that accident. Finding that the release operated to release the defendant from any claims, the trial court dismissed the suit. Plaintiff appealed, contending that she did not intend to release the defendant from liability, and that neither the defendant nor any other person paid consideration for the release.

The Brown court held that the plaintiff's release discharged all persons who might have been liable from all claims resulting from the accident. In its reasoning, the Brown court cautioned that to hold otherwise would disregard the plain language of the release. Further, the court emphasized that the plaintiff did not assert that she signed the agreement under any sort of fraud or duress. Thus, the Brown court found that neither the plaintiff's failure to be fully compensated for her claim nor the plaintiff's allegation that she did not intend to release the defendant relieved the plaintiff of her responsibility for the plain language of a release which she admittedly freely executed. Clearly then, the Brown decision demonstrates that, absent special circumstances such as fraud or duress, the determination of the parties' intent should be drawn from a reasonable interpretation of the four corners of the instrument.

Although the question of the Oklahoma UCATA's effect on general liability releases had not been decided by the Oklahoma Supreme Court prior to Moss, the

15. See id. at 57.
16. Id. at 55.
17. See id.
18. See id.
19. See id. at 57.
20. See id.
21. See id.
22. See id.
United States Court of Appeals for the Tenth Circuit decided this precise issue in *Mussett v. Baker Material Handling Corp.* The *Mussett* court recognized that the Oklahoma Supreme Court had not specifically ruled on the effect that the adoption of the UCATA had on general releases. However, in fashioning its interpretation of Oklahoma law, the Tenth Circuit relied on the Oklahoma Supreme Court's earlier decision in *Brown*, which upheld general releases. Following *Brown*'s lead, the *Mussett* court concluded that the Oklahoma UCATA did not prohibit an injured party from broadly contracting to release all named and unnamed tortfeasors.

In *Mussett*, the plaintiffs signed a release discharging "all . . . persons, firms, and corporations, both known and unknown, of and from any and all claims." After the district court dismissed the plaintiffs' subsequent suit against the defendant, the plaintiffs appealed on two grounds. First, the plaintiffs argued that the trial court should have allowed the introduction of parol evidence to determine the intent of the parties. Second, the plaintiffs contended that the above provision did not effectively release the defendant under Oklahoma's UCATA.

Addressing the plaintiffs' first argument, the *Mussett* court held that when a release shows no ambiguity, the court must interpret the contract as a matter of law and must not look beyond the contract. Finding no ambiguity in the plaintiffs' release, the *Mussett* court refused to consider extrinsic evidence to discern the intent of the release. The *Mussett* court then turned to the plaintiffs' contention that the UCATA limited the binding effect of a release only to those parties specifically named in the release. In response, the court opined that the *Brown* decision, upholding general releases, controlled the interpretation of the release, notwithstanding the adoption of the UCATA. Indeed, the *Mussett* court ruled that the Oklahoma legislature's inclusion of the language "unless its terms so provide" clearly demonstrated that the statute did not limit the reach of the release only to named defendants. Thus, the *Mussett* court held that section 832(H)(1) did not overrule *Brown*, and that the release executed by the plaintiffs operated to release the defendants from liability. Significantly, the *Mussett* court found that neither Oklahoma case law nor legislative intent provided a basis to abrogate the binding effect of general liability releases.

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23. 844 F.2d 760 (10th Cir. 1988) (applying Oklahoma law).
24. See id. at 762.
25. See id.
26. Id. at 761.
27. See id.
28. See id.
29. See id. at 762 (citing 15 OKLA. STAT. § 154 (1966)).
30. See id.
31. See id.
32. See id.
33. See id.
34. See id.
IV. Three Current Approaches to General Liability Releases

Plainly, the enactment of the UCATA has necessitated that many jurisdictions consider the UCATA's impact on the validity of general releases. After reviewing those cases that have considered this question, three different views appear: (1) the "complete bar" rule; (2) the "intent" rule; and (3) the "specific identity" rule.35

A. Complete/Absolute/Flat Bar Rule

According to the complete bar rule, the release of a named tortfeasor and all other persons, firms, or corporations from any and all claims serves as a complete bar to actions against an unnamed tortfeasor.36 Typically, courts which advocate this rule base their decision on adherence to traditional contract principles.37 In Hasselrode v. Gnagey,38 which espouses the complete bar rule, the court examined the effect of Pennsylvania's adoption of the UCATA on the validity of general releases.39 In its decision, the Hasselrode court focused on the simplistic terms of the general release,40 which plainly purported to release any and all persons from liability.41 Because an examination of the release itself indicated its breadth, the intent of the parties must be gleaned from the language of the release.42 Emphasizing that the release could not have been more specific,43 the Hasselrode court concluded that nullifying the general release would amount to "torturing, misconstruing, and in effect, rewriting the language of the release."44

Clearly, the complete bar rule gives broad construction to the statutory language "unless the terms so provide." Likewise, those courts following the complete bar rule generally do not permit the introduction of extrinsic evidence to determine the intent behind an unambiguous release.45 Interestingly, the Oklahoma courts had espoused this view for nearly thirty years,46 until the landmark decision of Moss.

37. See Moss, 897 P.2d at 284.
39. The Uniform Contribution Among Tortfeasors Act provides, inter alia: "A release by the injured person of one joint tortfeasor, whether before or after a judgment, does not discharge the other tortfeasors unless the release so provides . . . ." 12 OKLA. STAT. § 832(H) (1991) (emphasis added) (amended in 1995).
40. The language of the UCATA adopted in Pennsylvania provides that other tortfeasors were not discharged "unless the release so provides," Moss, 897 P.2d at 284, whereas until 1995, Oklahoma's UCATA used the language "unless its terms so provide" in section 832(H)(1), see 12 OKLA. STAT. § 832(H)(1) (1991) (amended 1995). This slight difference, however, holds no significance.
41. See Hasselrode, 172 A.2d at 765.
42. See id.
43. The release recited, inter alia, that plaintiff released defendant, and "any and all other persons, associations and corporations, whether herein named or referred to or not" from all claims. Id. at 764.
44. Id.
45. See Moss, 897 P.2d at 285.
46. This view was first reflected in Brown v. Brown, 410 P.2d 52 (Okla. 1966).
Thus, the Moss court not only overturned many years of judicial precedent but also turned away from the majority view of other jurisdictions.

B. The "Specific Identity" Rule

In sharp contrast to the complete bar rule, some courts follow the specific identity rule. Those courts that apply this view construe the UCATA language "unless its terms so provide" as requiring that the release name or otherwise specifically designate the other tortfeasors in order to discharge all other potential tortfeasors from liability. While the courts differ on what constitutes "specific identification," all courts agree that naming a releasee fulfills this requirement. These courts also concur that, short of being named, a party must be referred to in the release in such a manner that his identity is made manifest.

Furthermore, the courts also make different policy arguments supporting the specific identity rule. First, the court in Beck v. Cianchetti stressed that the relative position of the parties should be considered when interpreting a release. For example, the Beck court noted the situation of an insurance company which had prepared the release and presented it to the injured party, who had no familiarity with the terminology of the release and did not recognize its legal implications. Acknowledging that unsuspecting injured persons often sign such releases, the Beck court held that the insurance company would have the burden of showing that the plaintiff understood the release and intended to relieve the unnamed tortfeasors.

Also apparent from the Beck decision was the reasoning that legislatures adopt the UCATA in order to mitigate the harsh effects of the common law rule. Otherwise, the Beck court reasoned, there would have been no reason to enact the UCATA. In fact, the Beck court identified that the thrust of the language "unless its terms so provide" was to retain the liability of tortfeasors and must therefore be narrowly construed.

In Moore v. Missouri Pacific Railroad, the Arkansas Supreme Court elaborated on the virtues of the specific identity rule. The Moore court recognized that the specific identification of joint tortfeasors as a condition precedent to their discharge will insure that the intention of the parties is accomplished. Moreover, the court determined that such a rule greatly minimizes the possibility that unwary individuals

47. See Douglas v. U.S. Tobacco Co., 670 F.2d 791, 794 (8th Cir. 1982) (noting that the majority position holds that language releasing any and all persons in addition to the named parties satisfies the requirement of the Uniform Act's language "unless the release so provides").

48. See Moss, 897 P.2d at 285.


50. See id. at 949.

51. 439 N.E.2d 417 (Ohio 1982).

52. See id. at 420.

53. See id.

54. See id.

55. See id.

56. 773 S.W.2d 78 (Ark. 1989)

57. See id. at 81.
will misunderstand the effect of a release. Lastly, the Moore court pointed out that the rule lent itself to fair play and easy application.

C. The "Intent" Rule

The third view taken by the courts, the intent rule, provides that a general release will discharge unnamed tortfeasors only if the parties who contracted the releases specifically intended to do so. This view takes the middle road and holds that language purporting to release all "persons, firms or corporations" does not necessarily discharge all unnamed tortfeasors. Rather, such a release will only serve as a general release if and to the extent that the parties who negotiated the release intended it to do so.

In Neves v. Potter, the Colorado Supreme Court expounded on the intent rule by addressing two issues. First, the Neves court decided whether the parties who executed a general release intended to release all persons from liability. The court then concluded that general issues as to material fact existed as to the parties’ true intent. Second, the court confronted the issue of whether, as a matter of law, a general release may ever effectively relieve all other potential tortfeasors from liability. Just as the court’s attention to the intent issue showed the court’s movement away from the complete bar rule, the court’s answer to the second issue demonstrated the court’s reluctance to completely abrogate the binding effect of general releases. Ultimately, the Neves court upheld the validity of such releases to the extent that they exhibited the intent of the parties.

Justifying its adoption of the intent rule, the Neves court reasoned that this rule most effectively accomplished the purpose and spirit of the UCATA by retaining the liability of joint tortfeasors unless the releasing party intended to discharge all claims. Focusing on intent, the court emphasized that, as a general rule of law, a court has the duty to interpret an instrument to achieve the manifest intention of the parties. In determining the intention of the parties, the court must rely on "good sense and the plain understanding of the words" and acts of the parties.

Although generally a document should be interpreted from its four corners, such an examination would not always reveal a party’s true intent. Thus, the Neves court acknowledged that the intent rule often necessitates the introduction of parol evidence, which can be used to determine the intent of a party when litigation arises.

58. See id.
59. See id.
61. See McInnis, 625 F. Supp. at 957.
62. See Neves, 769 P.2d at 1051.
63. 769 P.2d 1047 (Colo. 1989).
64. See id. at 1051.
65. See id. at 1056.
66. See id. at 1053.
67. See id. at 1055.
68. See id. at 1053 citing Harrison Western Corp. v. Gulf Oil Co., 662 F.2d 690 (10th Cir. 1981); Martinez v. Continental Enter., 730 P.2d 308 (Colo. 1986) (en banc)).
69. See id.
between a party to a contract and a stranger thereto. The Neves court noted that this exception to the parol evidence rule reflected the disdain of the court toward individuals who seek to capitalize on an agreement to which they were not a party. The willingness of courts to admit extraneous evidence as to the identity of the parties signified the most significant change from the complete bar rule.

An examination of the reasoning of those courts which have applied the intent rule reveals that this rule largely stems from a rejection of both the complete bar rule and the specific identity rule. Perhaps the McInnis court best summarized the benefit of the intent rule over the alternative views when it concluded:

Whereas the flat bar rule presumes that the releasor meant to discharge the world, and the "specific identity" rule presumes that the releasor intended only to discharge those persons or entities who are designated in . . . the instrument, the "intent" rule abandons both of these fictions and permits the actual intent of the parties to control.

It seems that the legal "fiction" of the complete bar rule arises from the view that this rule precludes redress on the basis of a chance insertion of boilerplate wording on a printed form. Conversely, the legal fiction presented from the specific identity rule stems from the presumption that only specifically enumerated parties escape liability. Thus, it appears that the intent rule originated largely from attempts to dispense with these legal fictions. Ironically though, the intent rule, with its emphasis on parol evidence, allows for its own legal fictions as parties will inevitably introduce evidence after the fact that does not at all reflect their intentions at the time of signing.

Aside from these criticisms, those courts advocating the intent rule have also founded their decisions on seemingly analogous decisions by the United States Supreme Court. The Neves court noted that the Supreme Court has scorned rules which give broad preclusive effect to release agreements. For example, in Zenith Radio Corp. v. Hazeltine Research, Inc., the Supreme Court ruled that in the antitrust area a party releases only those parties whom he intends to release. Likewise, in the intellectual property realm, the Court adopted the intent rule for patent infringement cases. Therefore, although the Supreme Court has never opined about the effect of a general tort liability release, courts have nonetheless utilized Supreme Court decisions to buttress their adoption of the intent rule.

70. See id. at 1054 (citing Bardwell v. Commissioner, 318 F.2d 786 (10th Cir. 1963); American Crystal Sugar Co. v. Nicholas, 124 F.2d 477 (10th Cir. 1941); Continental Trust Co. v. Johnston, 188 P. 1112 (Colo. 1920)).
71. See id.
73. See id. at 954-55.
74. See Neves, 769 F.2d at 1055.
76. See id. at 347.
V. Statement of the Case

In June 1989, Bryan Moss rode in a vehicle driven by Chasteen, which collided with McBride. As a result of the collision, Moss died, and McBride sustained injuries. After the accident, the Mosses (Appellants), the Roths, and the McBrides filed claims with Chasteen's insurance carrier. Appellants executed releases and settled the claims for the amount of Chasteen's policy limit. Appellants settled the claims for the amount of Chasteen's policy limit. The release signed by Appellants had Chasteen's name handwritten in blank spaces provided on the preprinted release form. Further, each form displayed language purporting to release:

any other person, firm or corporation charged or chargeable with responsibility or liability . . . from any and all claims, damages, liability or damages, from any act or occurrence up to the present time, and particularly on account of all personal injury, disability, property damage, loss or damages of any kind sustained . . . in consequence of [the accident].

In April 1990, Appellants sued Appellees (the City of Oklahoma City and Mansur, Daubert & Strella, Inc.) for the negligent placement of a stop sign as well as the negligent design and maintenance of the intersection where the accident took place. Appellees Mansur and the city separately moved for summary judgment, arguing that the clear and unambiguous language in the release relieved them of liability, even though they paid no consideration to Appellants for the release.

The trial court granted summary judgment, ruling that as a matter of law the release discharged all tortfeasors, named and unnamed. Also, the trial court concluded that parol evidence would not be admissible to determine the intended scope of the release. Instead, the clear language of the release would govern. After the Oklahoma Court of Appeals affirmed the decision, the Oklahoma Supreme Court granted certiorari to consider the effect of title 12, section 832 of the Oklahoma Statutes on a general release purporting to release a named tortfeasor along with all other potentially liable parties.

In its discussion of the case, the Oklahoma Supreme Court in Moss outlined the three approaches to the UCATA's effect on general liability releases. After

78. See Moss v. City of Oklahoma City, 897 P.2d 280, 282 (Okla. 1995).
79. See id.
80. See id.
81. See id. Apparently the McBrides received $10,000, while the Roths received $5000 each. See id. at 282.
82. See id.
83. Id. at 282.
84. See id. Mansur, Daubert & Strella, Inc. allegedly designed the intersection, and the city allegedly maintained it.
85. See id. at 283.
86. See id.
87. See id.
considering these approaches, the court held that the specific identity rule best effectuated the legislative purpose and design of the Oklahoma version of the UCATA.\textsuperscript{88} For that reason, the court adopted that rule as the law of Oklahoma.

Justifying its verdict, the Moss court emphasized its belief that the primary purpose of statutory interpretation lies in ascertaining and following legislative intent.\textsuperscript{89} The Moss court then concluded that the Oklahoma legislature's intention in enacting section 832(H)(1) was to apply the specific identity rule to general liability releases.\textsuperscript{90} In its reasoning, the court remarked that the legislature modeled section 832 after the UCATA, which was enacted to preserve an unsuspecting party's right to obtain relief from tortfeasors and a policy to prevent an injured party's involuntary discharge of liable tortfeasors.\textsuperscript{91} Specifically, the court explained:

[T]he plain meaning of the phrase "unless its terms so provide," coupled with the preceding language of § 832(H)(1) that a release "does not discharge any of the other tortfeasors from liability" clearly contains an expression of legislative intent that such other tortfeasors are not discharged unless they are either named or otherwise specifically identified in the release.\textsuperscript{92}

In its decision, the Moss court went beyond simply rationalizing the implementation of the specific identity rule. In fact, the court categorically rejected both the complete bar rule and the intent rule. First, Moss rejected the complete bar rule by stating that the rule failed to achieve the objectives of the UCATA and failed to acknowledge the legislature's intention to abrogate the common law doctrine espoused in Brown.\textsuperscript{93} In the eyes of the Moss court, the complete bar rule would perpetuate the legacy of the common law rule by releasing unnamed tortfeasors in situations contrary to the releasing party's intent or where the releasing party did not receive full compensation for his or her injuries.\textsuperscript{94} In sum, the court concluded that the complete bar rule allowed joint tortfeasors who were not parties to a release to enjoy a "windfall benefit" for which they did not bargain.\textsuperscript{95}

Perhaps more surprisingly though, the court also rejected the more moderate intent rule. While the Moss court conceded that this rule would prevent a party from unwittingly relinquishing a cause of action, the court opined that the Oklahoma UCATA language did not lend itself to such an interpretation.\textsuperscript{96} After examining the plain language of section 832(H)(1), the court found no indication that the

\textsuperscript{88} See id. at 287.
\textsuperscript{89} See id. at 286 (citing Ledbetter v. Alcoholic Beverage Laws Enforcement Comm'n, 764 P.2d 172, 179 (Okla. 1988)).
\textsuperscript{90} See id.
\textsuperscript{91} See id.
\textsuperscript{92} Id.
\textsuperscript{93} See id. at 287 (referencing Brown v. Brown, 410 P.2d 52 (Okla. 1966)).
\textsuperscript{94} See id.
\textsuperscript{95} See id.
\textsuperscript{96} See id. at 288.
legislature meant to carve out a special exception to the parol evidence rule in the case of general releases.  
97 Lastly, the court noted that the intent rule could not be easily applied but would require evidentiary hearings in nearly every instance when a general release is challenged.  
98 Therefore, the court refused to sanction such a view without a clearer indicia of legislative intent supporting the intent rule.

VI. Analysis of the Decision

A. Fundamental Change in Oklahoma Law

Oklahoma courts should immediately experience the impact of the Moss decision as it diverged greatly from previous rulings regarding general liability releases. By adopting the specific intent rule, the court dramatically changed the law by overturning nearly thirty years of judicial precedent established by the 1966 decision in Brown v. Brown.  
100 Undoubtedly, Moss marks a significant reversal in Oklahoma which should have far-reaching effects.

B. Contractual Implications

Clearly, the Moss decision will have significant contractual ramifications. Under Oklahoma law, a release agreement constitutes a contract.  
101 Further, according to traditional contract principles, a contract should be interpreted from the four corners of the document.  
102 Thus, pursuant to the most fundamental elements of contract law, a general release should be interpreted on its face. In Moss, the court completely abandoned this principle. More importantly though, the court set such releases aside in the absence of any equitable concerns such as fraud, duress, and incompetency.

To the contrary, Appellants in Moss signed a clear and unambiguous release — one that was not procured under any sort of fraud or misrepresentation. Appellants were not misled, incompetent, or illiterate, nor were they unrepresented by counsel. Quite the opposite, Appellants signed the releases on the advice of counsel. Ironically, under the advice of that same counsel, Appellants were allowed to renege on their decision. Perhaps the court in Buttermore v. Alquippa Hospital  
103 best summarized the astounding effects that the Moss decision can create:

If such a release can be nullified or circumvented, then every written release and every written contract or agreement of any kind no matter how clear and pertinent and all-inclusive, can be set aside whenever one

97. See id.
98. See id.
100. 844 F.2d 760 (10th Cir. 1988).
of the parties has a change of mind or whenever there subsequently occurs a change of circumstances which were unforeseen, or there were after-discovered injuries, or the magnitude of a releasor's injuries was unexpectedly increased, or plaintiff made an inadequate settlement. It would make a mockery of the English language and of the law . . . .

C. Determination of Legislative Intent

The concerns of the Buttermore court reveal an additional problem flowing from the Moss decision. Rather than focusing on the intent of the parties who signed the contract, the Moss court appears to look only at legislative intent in interpreting the release. As a result, plaintiffs may engage in "Monday morning quarter backing" with respect to any contract into which he or she enters. Essentially, the following sort of scenario could become commonplace: A plaintiff can sign a general release in exchange for fair consideration, fully intending a complete settlement at that time. Soon the plaintiff learns of the existence of another deep pocket. The predictable result is a newly filed lawsuit, and a plaintiff who is not bound by his or her voluntary entrance into a clear contractual agreement.

Further, a close analysis of the Moss decision reveals a flaw in the court's reasoning. In its rationale, the Moss court relies heavily on the plain language of section 832(H)(1) when interpreting the Oklahoma legislature's intent in drafting that statute. For example, although the court praised the positive features of the intent rule, the court nonetheless declined to adopt it because it found no specific language in section 832 indicating the creation of an exception to the parol evidence rule. Again, relying on the plain language of the Oklahoma UCATA, the court concluded that the legislature clearly intended the specific identity rule. Yet, the plain language of section 832 in effect at the time Moss was decided showed no such intent. Indeed, prior to the 1995 amendments, nowhere in the language of section 832 would one find a requirement that only those parties specifically identified in the release will be discharged from liability. Had the legislature so clearly intended such a rule, it very easily could have included those self-explanatory words in the statute.

In sum, the Moss court felt compelled to reject the intent rule because the court found no language in section 832 which specifically advocated that rule. Instead, the court concluded that the specific identity rule best represented the intention of the legislature. Yet, the language of section 832 in effect plainly did not state that a general release only applied to specifically named parties. In fact, the language of section 832 espoused neither the intent nor the specific identity rule. Recognizing this, the Moss court's rejection of the intent rule and its adoption of the specific identity rule based on the plain language of the statute is hardly reconcilable.

104. Id. at 735.
105. Moss, 897 P.2d at 286.
106. See id. at 288.
107. See supra note 2.
D. 1995 Amendment to Section 832(H)(1)

A determination of legislative intent goes to the very heart of the Moss decision, especially in light of a dramatic change in Oklahoma law that became effective the same day as the Moss decision. On May 23, 1995, the date on which the court issued the Moss decision, the Oklahoma legislature amended section 832(H)(1) by passing Senate Bill 277.\footnote{108} The amended portion of section 832 now provides that "[A release] does not discharge any other tortfeasor from liability for the injury or wrongful death unless the other tort-feasor is specifically named."\footnote{109}

Plainly, this amendment to section 832 reflects an adherence to the specific identity rule espoused in the Moss decision. On its face, the passage of the new law might seem to settle the issue of legislative intent. On the contrary though, the amendment to section 832 has ignited more burning questions. First, the new law raised the question as to whether the law of Moss and Senate Bill 277 should apply retroactively or prospectively. Second, the legislature's motives behind amending this law presented the issue of whether the Oklahoma Supreme Court wrongly decided Moss. Indeed, these questions formed the basis for a Petition for Rehearing which resulted in a typically swift denial by the court.\footnote{110}

E. Retroactive Versus Prospective Application

As to the first issue, the retroactive effect of Senate Bill 277 turns on whether the legislature intended the amendment to substantively change the existing law or to clarify original intent. Under Oklahoma law, only a clarifying amendment, i.e., one which explains a vague law to more clearly reflect legislative intent, may have a retroactive effect.\footnote{111} Thus, an amendment which makes a substantive change in the law will only apply prospectively.\footnote{112} Appellees (City of Oklahoma City et al.) argued that the legislature's amendment to section 832 substantively changed the law and may only apply prospectively.\footnote{113} Appellees reasoned that the amendment implemented a new requirement for liability releases by mandating that a person must be specifically named in the release in order to be relieved from liability.\footnote{114}

Conversely, Appellants took the position that the legislature intended merely to clarify its original intent, giving the amendment to section 832 retroactive effect.\footnote{115} As evidence for this assertion, Appellants offered portions of a memorandum written by Oklahoma State Senate attorney Mark H. Ramsey, which explains: "This bill
corrects a problem created by the Tenth Circuit in Mussett . . . . The decision in the Mussett case ignores the history and interpretation of the Uniform Act which dates back to 1939 . . . . This bill clarifies this issue and overturns Mussett . . . ." 116

Unfortunately, aside from this memorandum excerpt, scarce evidence exists that sheds light on the legislature's intent in amending section 832. Further complicating the issue, the above memorandum stemmed from communication between Ramsey and the bill's author, Sen. Gene Stipe. After recognizing that the "plaintiff-friendly" bill was authored by a prominent Oklahoma plaintiff's attorney, the legislature's true intent in passing the amendment seems that much more convoluted.

Without the benefit of clairvoyance, a true determination of the intent behind the legislature's adoption of the original version of section 832 remains highly unlikely. What can be predicted with certainty is the alarming results that may occur if the principles of Moss and Senate Bill 277 apply retroactively. Once the specific intent rule has retroactive effect, many past general liability releases would in effect be voidable. As a result, Oklahoma courts could likely experience an unwelcome flood of litigation. The only true limitation on the surge of potential lawsuits would seem to be the expiration of the statute of limitations. In addition to placing a heavy and unnecessary burden on courts' dockets, a retrospective application of the specific identity rule unfairly burdens those parties who relied on general releases by forcing them to litigate matters that were thought to be long settled. 117 Unlike the Oklahoma Supreme Court, other courts which have addressed the issue of retroactive or prospective application have recognized this problem and have limited their decisions to apply only prospectively. For example, in Alsup v. Firestone Tire & Rubber Co., 118 the Illinois Supreme Court acknowledged that the "widespread use of and reliance upon general releases to discharge all tortfeasors, including those not specifically identified in the release, require that [the court's] decision be made prospective in operation." 119

Thus, in deciding how to apply the amended Oklahoma law, the court would have been better advised to follow the general rule. Normally, statutes are presumed to operate prospectively. 120 A party may rebut this presumption only "where the purposes and intents of the legislature to give a retrospective effect is expressly

116. See id. (emphasis added).
117. In fact, the Moss decision has already impacted existing cases. On September 26, 1995, the court overturned a general liability release in Cotner v. Cessna Aircraft Co., 903 P.2d 878, 879 (Okla. 1995). In Cotner, the appellant settled a wrongful death claim resulting from a plane crash. See id. Representatives of the owner and pilot of the plane agreed to pay the appellant $225,000. See id. The court noted that the boilerplate language contained in the release violated the specific identity rule set forth in Moss, thus the court held that the release did not release any parties not specifically named. See id. Further, in Carmichael v. Beller, 914 P.2d 1051 (Okla. 1996), and in Shadden v. Valley View Regional Hospital, 915 F.2d 364 (Okla. 1996), the court applied and reaffirmed the specific identity rule established in Moss.
118. 461 N.E.2d 361 (Ill. 1984).
119. See id. at 364.
120. See Wickham v. Gulf Oil Corp., 623 P.2d 613, 615 (Okla. 1981) (citing Scott Paper Co. v. City of Anacortes, 578 P.2d 1292, 1299 (Wash. 1978)).
declared or necessarily implied from the language used." Any doubt must be resolved against retroactive effect. At best, the Oklahoma legislature's true intent on this issue remains speculative. Also, no language in the amendment declares or implies a retroactive intent. Therefore, in consideration of both public policy issues and Oklahoma case law, the uncertainty surrounding the amendment to section 832 should have strongly weighed against any retrospective application.

F. Impact of Legislative Intent on the Moss Decision

A determination of the Oklahoma legislature's purpose in amending section 832 also bears on the correctness of the Moss decision. In their Petition for Rehearing, Appellees asserted that if the amendment requiring the specific identity of released parties constituted a legislative act taken to make a substantive change from the original statute, then the Moss court wrongly interpreted section 832(H)(1). However, if the purpose of the legislature was to clarify the original statute, the Moss court correctly interpreted the statute as espousing the specific intent rule. According to Oklahoma law, a statutory amendment generally indicates legislative intent to make a substantial change in the preexisting law. In keeping with this general rule, the amendment to section 832 should have been presumed to have made a substantive change in the statute. Consequently, the Moss court would have misinterpreted legislative intent behind the original provisions of section 832. In spite of this presumption, the Oklahoma Supreme Court swiftly denied Appellees' Petition for Rehearing. The court's denial should cause no surprise, as it called for the court to reject its own recent decision.

G. Economic Implications

Regardless of whether the Moss decision applies retroactively or prospectively, the economic impact of the Moss decision will likely be felt by litigants. No longer will a releasing party enjoy the benefit of settling his claims against all tortfeasors with the use of a simple boilerplate form. Instead, a releasing party will likely be compelled to draft separate agreements with each potential tortfeasor with whom he or she chooses to release from liability. The releasing party will then incur additional unnecessary legal expenses.

Moreover, the implementation of the specific identity rule has already caused concern in other jurisdictions for the negative influence it may exert on settlement agreements. Indeed, the dissenting opinion in Alsup voiced the concern that:

the rigid requirement [of the specific identity rule] would discourage settlement . . . [when] a tortfeasor who settles and executes a release is barred from contribution from another tortfeasor whose liability is not extinguished by the release. Unless all claims of a plaintiff are

121. Id. (emphasis added).
124. See Oklahoma Tax Comm'n v. Stanolind Pipe Line Co., 113 F.2d 853, 856 (10th Cir. 1940).
extinguished against all joint tortfeasors... a defendant will be reluctant to settle, knowing that he surrenders a possible right to contribution against some known or unknown unreleased tortfeasor.\textsuperscript{125}

Of course, whether the specific identity rule will have a similar effect on the settlement of litigation in Oklahoma presents yet another unanswered question resulting from the \textit{Moss} decision.

\textbf{H. Summation of Analysis}

In rendering its decision, the \textit{Moss} court embraces the specific intent rule in the face of many basic principles of law. First, the court undermines the premise that a contract should be interpreted from its four corners, absent considerations such as fraud or duress. In addition, the court gives no consideration to the intent of the parties who signed the release in \textit{Moss}. As a result, the court has injected more uncertainty into the law of contracts. Essentially, the \textit{Moss} decision provides another avenue by which a clear and unambiguous contract may be set aside, notwithstanding the intent of the parties at the time of signing.

Second, despite the clarity of section 832, the \textit{Moss} court provides an interpretation of legislative intent that opposes the plain language of the statute. Moreover, the court arrived at this interpretation after providing virtually no authority for how it reached this conclusion. Third, the court's failure to apply its decision only prospectively poses the most disturbing result from the \textit{Moss} decision. Even those parties who signed general releases, under the advice of counsel and with full knowledge of their consequences, could have the opportunity to seek more compensation for a once-settled claim.

Finally, the \textit{Moss} decision could cause unwelcome economic impacts through potential increases in litigation costs if release forms must be separately negotiated and drafted. \textit{Moss} may also impede the settlement process and necessitate costly litigation. With these realizations in mind, the virtues of fairness and wisdom elude the \textit{Moss} decision.

\textbf{VII. Conclusion}

In enacting section 832, the Oklahoma legislature undisputedly intended to reverse the harsh common law rule that a release of one tortfeasor automatically released all other liable parties. Yet the Oklahoma Supreme Court's interpretation of the language of section 832 has created a rule that is equally as severe as the common law rule which section 832 sought to ameliorate. The \textit{Moss} decision implemented its own rigid rule that precludes any general release from releasing any other tortfeasors than those specifically named in the release, even if the releasing party intended otherwise.

The \textit{Moss} court's adoption of the rigid specific identity rule has produced potentially disturbing ramifications. First, the \textit{Moss} decision erodes the certainty of contractual provisions. Even a fully informed party who signed an unambiguous

\textsuperscript{125} Alsup v. Firestone Tire & Rubber Co., 461 N.E.2d 361, 367 (Ill. 1984).
general release under the advice of counsel may now escape that voluntary agreement. Second, a retroactive application of the specific identity rule could cause a surge of litigation of once-settled actions. Third, the Moss decision could heighten litigation costs and decrease settlement opportunities. Thus, in its attempt to change direction away from the vices of the common law rule, the court has taken a course in Moss which presents its own distressing consequences.

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