

THOUGHT LEADERSHIP

News

COURT OF APPEALS FINDS LATENT AMBIGUITY IN RELEASE AGREEMENT AND REVERSES SUMMARY-JUDGMENT AGAINST RELEASING PARTY

Newsbrief

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Last week, the Court of Appeals of Texas, Houston concluded that a release agreement between the insurer and third-party claimant had a latent ambiguity and, thus, summary-judgment based on the release was improper. In *Lowe v Watson*, 2020 WL 7349506, No. 01-20-00251-CV (Tex. App.—Houston [1st Dist], Dec. 15, 2020), Lowe was driving with his wife, Tricia, and their two children, when Watson rear-ended Lowe's car. Lowe subsequently filed injury claims for him and his family with Progressive Insurance Company. Shortly thereafter, Lowe and his wife signed three release agreements, two agreements releasing their claims as legal guardians of their children, and the following release agreement:

This Release is given by Juan Lowe Sr. and Tricia Lowe (hereinafter "Releasing Party/Parties"), who for and in consideration of payment of Five Hundred Dollars (\$500.00), ... hereby RELEASE, ACQUIT, AND FOREVER DISCHARGE Matthew Watson ... from any and all claims liabilities, obligations, demands or actions which the Releasing Party/Parties has/have now, or may have in the future, or for damages, costs, interest, fees or compensation of any kind on account of or in any way growing out of an accident which occurred on or about ...

Lowe contended that the release agreement released his claims in his capacity as Tricia's husband to settle his derivative loss-of-consortium claims, not his own separate personal injury claims in his individual capacity. In support thereof, Lowe relied on the facts that (1) the check for \$500 only identified Tricia, (2) the three separate releases were issued under the same claim number, (3) the various checks paid pursuant to the releases all listed the same claim number, and (4) the check issued to Lowe for \$951.26 (which he rejected) did not have an associated release with that amount listed as consideration.

The Court of Appeals began its analysis by noting that there was no express waiver of negligence or loss-of-consortium claims in the release agreement. Then, relying on the parol evidence described above, the court concluded that a latent ambiguity existed as to which claims Lowe intended to release or discharge. The court reasoned that the "release was susceptible to two reasonable interpretations: (1) a release of only Lowe's loss-of-consortium claim and (2) a release both of his claims for loss of consortium and negligence. In sum, because the release agreement was ambiguous, a genuine issue of material fact on Lowe's intent existed, and the Court of

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Appeals reversed the trial court's grant of summary-judgment against Lowe.