



WHEN A RELEASE DOES NOT RELEASE

By Sean Driscoll

When businesses resolve disputes or potential disputes short of a verdict, the one thing they desire is finality. What use is all the time, money and energy it takes to resolve or prevent a dispute, if the same or related issue can rear its head again in the future? One common tool to prevent the revival of an issue is a release. While a valuable concept, releases are often underused, and even when used, are sometimes ineffective for easily avoidable reasons.

A release is simply a contractual discharge or relinquishment of an obligation, duty or liability. For example, parties to a lawsuit generally settle. The result is an agreement addressing payment of money or other consideration, and a release of the claims in the lawsuit, as well as any others related to those claim.

Given the power of a release, some statutes regulate their use. If drafted or implemented improperly in one of these areas, the written and agreed upon terms may be of little effect. For example, in one recent case, seven employees that had been terminated in a reduction in force signed releases that failed to satisfy the technical requirements of the Older Workers Benefits Protection Act ("OWBPA"), a part of the Age Discrimination in Employment Act ("ADEA").

In this case, each of the plaintiffs had signed a release purporting to discharge their employer, Unocal Oil Co., from "all claims, liabilities, demands and causes of action" related directly or indirectly to the termination of employment. Although the employees signed the releases and accepted money in exchange, one of them subsequently spoke with an attorney on an unrelated matter. This lawyer suggested that the soon-to-be plaintiff speak with an employment attorney regarding the form of the release. He did, and learned that the release of age discrimination claims was probably invalid.

The plaintiffs then filed age discrimination lawsuits against their former employer. The employer was, unfortunately, required to admit that the releases did not satisfy the OWBPA, and were, therefore, ineffective to prevent the claims. Nonetheless, the employer argued that the employees had failed to file their lawsuit within the 300 day limitation period for an ADEA claim. The plaintiffs countered that the release misled them. They argued that, because of the language of the release, they believed they had signed away all their rights under the ADEA. The court submitted this issue to the jury, which found in favor of the plaintiffs. The court held that the language in the release would have misled most laymen to believe that they had released their ADEA claims, and that Unocal should have "unmistakably understood" that they would have been so misled. The court held that it did not matter that the misleading conduct was not intentional. Thus, the employer could not assert the limitations defense either.

The plaintiffs' claims went forward and they prevailed. Each was awarded several thousand dollars of damages. In addition, the court found that the ADEA required a penalty of 100% of the plaintiffs' damages as well. Finally, and most costly, the court awarded the plaintiffs their "reasonable" attorney fees incurred in the case. The plaintiffs' attorneys then submitted a request for almost \$950,000 in fees. Of this amount, the court awarded them nearly \$700,000.

Unocal is a shining example of the power of a release. If the release in that case had been executed properly, the plaintiffs' age discrimination claims would have been prohibited. The company would have likely avoided paying its former employees (again), as well as paying its own attorneys and those representing the plaintiffs. In this case, however, sloppy work led to close to one million dollars of liability for the company.

Drafting releases and other legal documents should never be taken lightly. While not a complicated task in every case, the slightest omission or misstatement, particularly where the subject of the release is regulated by law, can turn a sought after goal into an unintended and costly reality. While many companies may “recycle” releases and other contractual forms, such a practice may be far more expensive than a relatively quick review or revision by counsel.

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