NEW MEXICO LAW REVIEW

Volume 26
Issue 3 *Summer 1996*

Summer 1996

Contract Law - The Changing Role of the General Release in New Mexico: Hansen v. Ford Motor Company

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CONTRACT LAW—The Changing Role of the General Release in New Mexico: *Hansen v. Ford Motor Company*

I. INTRODUCTION

In *Hansen v. Ford Motor Company*,[1] the New Mexico Supreme Court concluded that boilerplate language[2] in a general release purporting to release all persons from liability is inherently ambiguous,[3] and adopted a rebuttable presumption that a general release benefits only those parties specifically designated in the release.[4] The presumption adopted by the Supreme Court in *Hansen* reflects both a shift in contract law principles and the impact of New Mexico's pure comparative negligence system on other areas of New Mexico law.[5]

This Note first describes the facts and decision in *Hansen*. It then provides an overview of the various approaches to interpreting the terms of a general release and the role of the general release before and after the adoption of comparative negligence. Finally, it examines the rationale of the *Hansen* court, the new parameters of the law, and the implications of this decision.

II. STATEMENT OF THE CASE

Brenda Hansen was injured while driving her car when it collided with a car driven by Della Irene Pease.[6] In a settlement of her claims against Pease, Hansen signed a general release.[7] The release included boilerplate language purporting to discharge all persons whose conduct may have contributed to Hansen's injury.[8]

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1. 120 N.M. 203, 900 P.2d 952 (1995).

2. The term "boilerplate language" in this Note is used to refer to language purporting to discharge the whole world of liability, such as "every other person, firm, or corporation," etc.

3. *Hansen*, 120 N.M. at 211, 900 P.2d at 960.

4. *Id.* at 206, 900 P.2d at 955.

5. *Id.*

6. *Id.* at 204, 900 P.2d at 953.

7. *Id.*

8. *Hansen*, 120 N.M. at 205, 900 P.2d at 954. The release in question was a standard form which provided:

> For the Sole Consideration of [$29,000] to be paid the undersigned hereby releases and forever discharges Paul M. Pease, Della Irene Pease, and American National Property and Casualty Company[,] their heirs, executors, administrators agents, and assigns, and all other persons, firms or corporations liable or, who might be claimed to be liable . . . from any and all claims, demands, damages, actions, causes of action or suits . . . on account of all injuries . . . which have resulted or may in the future develop from an accident which occurred on or about the 31st day of January . . . . Undersigned hereby declares that the terms of this settlement have been completely read and are fully understood and voluntarily accepted . . . for the express purpose of precluding forever any further or additional claims arising out of the aforesaid accident.

Id.

Two years later, in 1993, Hansen sued Ford Motor Company, Al Allred Ford Lincoln-Mercury, Inc., and TRW, Inc. (collectively, Ford).[9] Hansen claimed that during the collision, the airbag in her car malfunctioned and caused her greater injury than she would have incurred had the device not malfunctioned. Ford moved for summary judgment alleging that the general release Hansen executed in 1991 released Ford from all liability arising out of the accident,[10] and that Hansen's product liability case is encompassed within the language of the general release.[11]

In response to Ford's motion for summary judgment, Hansen claimed that the release is ambiguous, and that therefore, the court should consider extrinsic evidence to determine the intent of the parties.[12] Hansen argued that she had only intended to release those persons specifically named in the general release.[13] To prove her intent, Hansen proffered deposition testimony and requested that the court hold an evidentiary hearing to determine the intent of the parties to the release.[14]

The trial court ruled that the release unambiguously included Ford, and granted summary judgment.[15] Relying on *Hendren v. Allstate Insurance Co.*,[16] the trial court stated that it was "convinced that the law in New Mexico declares that the general release signed by Plaintiff . . . necessarily includes all Defendants in the case at bar."[17]

Hansen appealed to the New Mexico Supreme Court,[18] seeking to resolve whether under traditional contract law principles, the terms of a general release facially and unambiguously include third parties who are not specifically designated or identified in the release as beneficiaries.[19]

III. HISTORICAL AND CONTEXTUAL BACKGROUND

In *Hansen*, the Supreme Court adopted a rebuttable presumption that all boilerplate language in a general release only releases those specifically identified in the language of the release.[20] The holding in *Hansen* is a

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9. *Id.* at 204, 900 P.2d at 953.
10. *Id.*
11. *Hansen*, 120 N.M. at 205, 900 P.2d at 954.
12. *Id.*
13. *Id.* Hansen named Paul Pease, Della Pease, and the Peases' insurance company, American National Property and Casualty Company, as the only persons she intended to release from liability. *Id.*
14. *Id.*
15. *Id.* at 204, 900 P.2d at 953.
16. 100 N.M. 506, 508, 672 P.2d 1137, 1139 (Ct. App. 1983) (holding that in order to set aside a written release there must be evidence of misrepresentation, fraud, undue influence, coercion or mutual mistake, and that such evidence must be clear and convincing).
17. *Hansen*, 120 N.M. at 205, 900 P.2d at 954.
18. *Id.* at 204, 900 P.2d at 953. Hansen cited four grounds for reversal in her appeal of the entry of summary judgment: 1) that the trial court erred in applying the "four corners" standard of contract interpretation; 2) that the terms of the release are ambiguous and therefore the trial court should have held an evidentiary hearing to determine the intent of the parties; 3) that the release should be rescinded because there was a mutual mistake; and 4) that the release should be rescinded because there was no meeting of the minds. *Id.* at 205, 900 P.2d at 954.
19. *Id.* at 204, 900 P.2d at 953.
20. *Id.* at 211, 900 P.2d at 960.

natural extension of the evolution of both tort law and contract law in New Mexico.

A. The Changing Role of the General Release In New Mexico

Historically, the general release which indemnified everyone was necessary to protect the tortfeasor who was exchanging the release for a settlement.[21] The doctrine of comparative negligence now provides this protection.[22]

At common law, each tortfeasor was held jointly and severally liable for the damages arising from an injury.[23] The release of one tortfeasor acted as a release for all other tortfeasors regardless of the terms of the release.[24] Joint tortfeasors[25] did not have a right to contribution from other joint tortfeasors.[26] Therefore, a party could be held liable for the entire damages resulting from an injury, when in fact the party was only responsible for a portion of the injury. The party could not later seek contribution from other tortfeasors who were partially responsible for the injury.

To ameliorate the harsh effect of this common law rule, in 1947, New Mexico adopted the Uniform Contribution Among Tortfeasors Act (Uniform Act).[27] While the Uniform Act did not abolish joint and several liability, it did give joint tortfeasors the right to contribution from other joint tortfeasors.[28] In order to seek contribution, the joint tortfeasor entering the settlement agreement had to procure the release of the other tortfeasors in that agreement: "[a] joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement."[29] Thus, the adoption of the Uniform Act gave tortfeasors an incentive to procure a general release which relieved everyone of liability during settlement agreements.

In 1981 and 1982, New Mexico revolutionized its tort law with the decisions in *Scott v. Rizzo*[30] and *Bartlett v. New Mexico Welding Supply,*

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21. *See* Wilson v. Gault, 100 N.M. 227, 668 P.2d 1104 (Ct. App. 1983).

22. *Hansen*, 120 N.M. at 211, 900 P.2d at 960. The court stated "that with the adoption of comparative fault the need to obtain the release of other tortfeasors has disappeared except for circumstances in which joint and several liability may yet obtain or in which potential indemnities exist." *Id.*

23. *Wilson*, 100 N.M. at 231, 668 P.2d at 1108.

24. *Id.* (citing Herrera v. Uhl, 80 N.M. 140, 141, 452 P.2d 474, 475 (1969); Downer v. Southern Union Gas Co., 53 N.M. 354, 357, 208 P.2d 815, 818 (1949)).

25. The Uniform Contribution Among Tortfeasors Act, N.M. STAT. ANN. §§ 41-3-1 to 41-3-8 (Repl. Pamp. 1989), defines "joint tortfeasors" as "two or more persons jointly or severally liable in tort for the same injury." N.M. STAT. ANN. § 41-3-1.

26. Rio Grande Gas Co. v. Stahmann Farms, Inc., 80 N.M. 432, 457 P.2d 364 (1969).

27. N.M. STAT. ANN. §§ 41-3-1 to -8 (Repl. Pamp. 1989).

28. *Wilson*, 100 N.M. at 231, 668 P.2d at 1108. "Once a joint tortfeasor had discharged the common liability or paid more than his pro rata share thereof, he could seek contribution." *Id.*

29. N.M. STAT. ANN. § 41-3-2(c) (Repl. Pamp. 1989).

30. 96 N.M. 682, 634 P.2d 1234 (1981).

Inc.[31] In *Scott*, the New Mexico Supreme Court adopted the doctrine of pure comparative negligence.[32] The goal of comparative negligence is to apportion fault among negligent tortfeasors, and to then apportion damages in proportion to the fault of each party causing the injury.[33]

A year later, in *Bartlett*, the New Mexico Court of Appeals abolished the doctrine of joint and several liability.[34] This doctrine was based on the idea that a plaintiff in a case involving multiple tortfeasors had suffered one single and indivisible injury, and that therefore, damages could not be apportioned among defendants.[35] According to *Bartlett*, the "concept of one indivisible wrong . . . is obsolete."[36] The court reasoned that after the adoption of a pure comparative negligence system, the practice of holding one party liable for the fault of another could no longer apply.[37]

The adoption of comparative negligence in *Scott* and the abolition of joint and several liability in *Bartlett* drastically altered the effect of the Uniform Act in New Mexico.[38] In *Hansen*, the court stated that pro-rata allocation of burden among joint tortfeasors in the Uniform Act was based on the existence of joint and several liability.[39] In light of *Bartlett*, and the abolition of joint and several liability, the Supreme Court concluded that the Uniform Act was no longer effective in New Mexico with respect to contribution among concurrent tortfeasors.[40]

Prior to the abolition of joint and several liability, a joint tortfeasor could invoke the Uniform Act to "either seek contribution from other tortfeasors or [to] protect himself against having to contribute."[41] After *Bartlett*, because each concurrent tortfeasor is liable only for his own respective share of the negligence, there is no need to invoke the Uniform Act, either to seek contribution from other tortfeasors or to protect himself against having to contribute.[42]

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31. 98 N.M. 152, 646 P.2d 579 (Ct. App.), *cert. denied*, 98 N.M. 336, 648 P.2d 794 (1982). Although certiorari was denied, the holding of the court of appeals in *Bartlett* was specifically recognized and affirmed by the New Mexico Supreme Court in Taylor v. Delgarno Transportation, Inc., 100 N.M. 138, 140, 667 P.2d 445, 447 (1983).

32. *Scott*, 96 N.M. at 684, 634 P.2d at 1236.

33. *Id.*

34. *Bartlett*, 98 N.M. at 157, 646 P.2d at 584. The doctrine of joint and several liability has not been abolished entirely. In the Several Liability Act, the New Mexico legislature named four instances in which the doctrine imposing joint and several liability shall apply: 1) to any persons who intentionally inflict injury; 2) to persons who are vicariously liable for the acts of another; 3) to persons strictly liable for the manufacture and sale of a defective product; and 4) to situations not covered by the foregoing but that have a sound basis in public policy. N.M. STAT. ANN. § 41-3A-1 (Repl. Pamp. 1989).

35. *Hansen*, 120 N.M. at 209, 900 P.2d at 958.

36. *Id.* (quoting *Bartlett*, 98 N.M. at 158, 646 P.2d at 585).

37. *Bartlett*, 98 N.M. at 158, 646 P.2d at 585.

38. *See Wilson*, 100 N.M. at 227, 668 P.2d at 1104.

39. *Hansen*, 120 N.M. at 210, 900 P.2d at 959 (citing *Wilson*, at 231, 668 P.2d at 1108).

40. *Id.*

41. *Wilson*, 100 N.M. at 231, 668 P.2d at 1108.

42. *Id.*

B. *The Evolution of Contract Interpretation and Its Effect on the General Release*

General releases are contractual agreements and New Mexico Courts have always analyzed them as such.[43] In an effort to better reflect the intent of the parties to a contractual agreement, New Mexico Courts have used a more liberal approach to contract interpretation.[44] Contract law in New Mexico now allows the use of extrinsic evidence to determine the intent of a contractual agreement even when the plain language of the agreement is unambiguous.[45]

In 1974, in *Johnson v. City of Las Cruces*,[46] the New Mexico Court of Appeals applied the "four-corners" approach to contract interpretation to the interpretation of a release.[47] The "four-corners" or "plain meaning" approach to contract interpretation means that a court will only look within the document itself to determine whether the language in the contract is ambiguous.[48] The *Johnson* court applied this approach when it stated that it could "only look to the four corners of the release" to determine its scope.[49] The court held that the general release relieved the defendant from liability, despite the fact that the defendant was not specifically named in the release.[50]

The Court of Appeals decision in *Johnson* was overruled by implication in *C.R. Anthony Co. v. Loretto Mall Partners*[51] and *Mark V, Inc. v. Mellekas*.[52] In *Anthony*, the New Mexico Supreme Court held that "in determining whether a term or expression to which the parties have agreed is unclear, a court may hear evidence of the circumstances surrounding

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43. *See* Ratzlaff v. Seven Bar Flying Serv., Inc., 98 N.M. 159, 646 P.2d 586 (Ct. App.), *cert. denied*, 98 N.M. 336, 648 P.2d 794 (1982).

44. *See* C.R. Anthony Co. v. Loretto Mall Partners, 112 N.M. 504, 817 P.2d 238 (1991).

45. *Id.* at 508-09, 817 P.2d at 242-43.

46. 86 N.M. 196, 521 P.2d 1037 (1974). In *Johnson*, the plaintiff sued the city of Las Cruces for injuries he suffered in an accident involving a vehicle driven by Celso Morales and a vehicle driven by a Las Cruces police officer in which the plaintiff was a prisoner. *Id.* Plaintiff settled and executed an agreement with Celso Morales, but not the city of Las Cruces. *Id.* at 197-198, 521 P.2d at 1037-38. Plaintiff contended that it was never his intention to release the City of Las Cruces when he released Celso Morales. *Id.* at 198, 521 P.2d at 1038.

47. *Id.* at 196, 521 P.2d at 1037. The release in question provided:

> the release, acquittance and discharge of Celso Morales and his, her, their, or its agents, servants, successors, heirs, executors, administrators and all other persons, firms, corporations, associations, or partnerships of and from and and [sic] all claims, actions, causes of action, demands, rights, damages, costs, loss of services, expenses and compensation whatsoever, which the undersigned now has/have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage and the consequences thereof resulting to or result from the accident, casualty or event which occurred on or about the 22 day of August, 1971 at or near Espina and Arizona, Las Cruces, New Mexico . . . .

Id. at 196-97, 521 P.2d at 1037-38.

48. *Anthony*, 112 N.M. at 508, 817 P.2d at 242.

49. *Johnson*, 86 N.M. at 197, 521 P.2d at 1038.

50. *Id.*

51. 112 N.M. 504, 817 P.2d 238 (1991). In *Anthony*, the Court analyzed the steps of contract interpretation. *Id.* at 507-510, 817 P.2d at 241-244.

52. 114 N.M. 778, 845 P.2d 1232 (1993).

the making of the contract . . . ."[53] If the court decides that the writing in question demonstrates the intention of the parties, then it cannot hear collateral evidence.[54] "The parol evidence rule addresses modifications and contradictions. The parol evidence rule is a rule of substantive law that bars admission of evidence extrinsic to the contract to contradict and perhaps even to supplement the writing . . . . [T]he rule should not bar introduction of evidence to explain terms."[55] However, if the court decides that a question does exist as to whether the terms of a contract are ambiguous, then the court may consider evidence surrounding the circumstances to clarify the ambiguity.[56]

In *Mark*,[57] the New Mexico Supreme Court applied the holding it had reached in *Anthony*.[58] The court reiterated its decision that evidence of surrounding circumstances may be presented to determine whether an ambiguity exists in the terms of a contract.[59] The court further noted that even if the language appears to be clear and unambiguous on its face, the court may still hear extrinsic evidence if necessary to determine intent.[60]

In *Perea v. Snyder*,[61] the New Mexico Court of Appeals applied the principles established in *Anthony* and *Mark* to interpret the scope of a general release.[62] Faced with interpreting the effect of a general release on non-settling tortfeasors, the *Perea* court analyzed the three common approaches to interpreting a general release: the "flat bar" rule, the "specific identity" rule, and the "intent" rule.[63]

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53. *Anthony*, 112 N.M. at 508, 817 P.2d at 242. Other jurisdictions, as well as many scholarly authorities, have recognized the difficulty in attributing meaning to terms without the benefit of a contextual understanding. *Id.* Therefore, these jurisdictions have rejected the four corners approach to determining whether ambiguity exists in the terms of a contract. *Id.*

54. *Id.* at 509, 817 P.2d at 243. The parol evidence rule bars the court from considering collateral evidence which is intended to contradict or vary the contract.

55. *Id.* at 509, 817 P.2d at 243.

56. *Id.* Prior to *Anthony*, certain New Mexico cases excluded external evidence if the purpose of the evidence was to show that an ambiguity did indeed exist. *Id.* In other words, if a court could not determine from the four corners of the document that an ambiguity in fact existed, neither party could introduce evidence to prove otherwise.

57. 114 N.M. 778, 845 P.2d 1232.

58. *Id.* at 781, 845 P.2d at 1235.

59. *Id.*

60. *Id.*

61. 117 N.M. 774, 877 P.2d 580 (Ct. App.), *cert. denied*, 118 N.M. 90, 879 P.2d 91 (1994). In January, 1991, Plaintiff Ramos was on a farm bus driven by Defendants Maria and Carlos Snyder, when it collided with a truck owned by Defendant Ikard Corporation (Ikard). *Id.* at 775, 877 P.2d at 581. Eight days following the accident, Ramos signed a release which released the Snyders and "every other person, firm, or corporation" in exchange for $4,000. *Id.* There is no evidence to show that Ikard participated in or gave consideration for this release. A year later, Ramos became involved in a suit that was filed against Ikard. *Id.* Ikard made a motion for summary judgment against Ramos stating that it had been released by the general release clause Ramos executed with the Snyders. *Id.* at 776, 877 P.2d at 582. The trial court granted Ikard's motion for summary judgment. *Id.* Ramos appealed, asserting two arguments, one legal and one factual: 1) that with the abolition of joint and several liability, the reason for a settling tortfeasor to release all other tortfeasors no longer exists; and 2) that it was never Ramos' intent to release anyone other than Carlos Snyder and Maria Snyder. *Id.* at 777, 877 P.2d at 582.

62. *Perea*, 117 N.M. at 779, 877 P.2d at 585.

63. *Id.* at 778, 877 P.2d at 584.

The "flat bar" rule[64] states that boilerplate release type language is unambiguous and releases all other potential tortfeasors from liability.[65] This rule looks only to the four corners of the document and will not consider extrinsic evidence to determine who is released from liability.[66] The "specific identity" rule states that unless a party is named or otherwise specifically identified by the terms of a release, that party is not discharged of liability.[67] The "intent rule" generally conforms to one of two formulations.[68] Some jurisdictions hold that parol evidence is admissible to determine the intent of the parties even when the terms of the agreement are facially unambiguous.[69] Other jurisdictions allow a party to prove its intent by extrinsic evidence only when the court determines as a matter of law that the language in the release is ambiguous.[70]

After reviewing the various approaches, the *Perea* court stated that New Mexico Courts should follow the intent rule.[71] Simultaneously, however, the court held that "an absolute bar will be presumed to be the intent of the parties to a general release unless an ambiguity is shown to exist by extrinsic evidence."[72] The court stated that parties to a general release are free to discharge all unnamed tortfeasors as third party beneficiaries to the release.[73] The result of this conclusion is that the rule the *Perea* court adopted is actually closer to the "flat bar" rule than the "intent" rule.

In light of the difficulties presented by *Perea*, the New Mexico Supreme Court in *Hansen* confronted the complexities involved in determining the scope of a general release.[74] The Supreme Court concluded that an inherent ambiguity exists in any general release, and adopted "a rebuttable presumption that a general release benefits only those persons specifically designated [in the release]."[75] The court reasoned that because a release is contractual in nature, the court's primary objective should be to construe the agreement in a manner which gives effect to the actual intent of the parties.[76] The court concluded that the "[t]he best way of determining and enforcing the actual intent of the parties expressed in boilerplate language is to adopt a rebuttable presumption that a general release benefits only those persons specifically designated in the release document."[77]

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64. *Id.*
65. *Id. See, e.g.*, Battle v. Clanton, 220 S.E.2d 97, 100 (N.C. Ct. App. 1975) *cert. denied*, 223 S.E.2d 391 (1976); Hasselrode v. Gnagey, 172 A.2d 764, 765-66 (Pa. 1961).
66. *Hansen*, 120 N.M. at 207, 900 P.2d at 956.
67. *Id.*
68. *Id.*
69. *Id. See, e.g.*, Sims v. Honda Motor Co., 623 A.2d 995, 1003 (1993).
70. *Id. See, e.g.*, Wells v. Shearson Lehman/Am. Express, Inc., 526 N.E.2d 8, 14-15 (N.Y. 1988).
71. *Perea*, 117 N.M. at 779, 877 P.2d at 585.
72. *Id.*
73. *Id.*
74. *See* Hansen v. Ford Motor Co., 120 N.M. 203, 900 P.2d 952 (1995).
75. *Id.* at 212, 900 P.2d at 961.
76. *Id.* at 211, 900 P.2d at 960 (citing Shaeffer v. Kelton, 95 N.M. 182, 619 P.2d 1226 (1980)).
77. *Id.* at 206, 900 P.2d at 955.

IV. RATIONALE OF THE *HANSEN* DECISION

In *Hansen*, the New Mexico Supreme Court recognized an inherent ambiguity in any general release as a matter of public policy.[78] The court addressed the specific assertions Hansen brought on appeal and discussed its rationale behind the adoption of a rebuttable presumption regarding general releases.[79]

A. Hansen's Asserted Grounds For Reversal of Summary Judgement

In *Hansen*, the New Mexico Supreme Court addressed Hansen's asserted grounds for reversal of summary judgment granted by the trial court.[80] The court stated that because general contract law principles apply to the interpretation of releases,[81] Hansen was correct that the trial court could have considered extrinsic evidence to determine whether the facially unambiguous terms of the release were in fact ambiguous.[82] The supreme court denied, however, Hansen's assertion that her deposition testimony established an ambiguity in the terms of the release, and that the trial court erred by failing to consider it.[83] The court concluded that Hansen's deposition testimony was insufficient to establish ambiguity because it only illustrated her unilateral subjective intent.[84]

For the same reason, the supreme court concluded that Hansen's deposition testimony alone did not sufficiently establish mutual mistake.[85] The court further stated that there was no evidence of fraud sufficient to void the release.[86] Finally, the court concluded that even if the trial court had refused to hear evidence regarding Hansen's deposition testimony, that alone would not be ground for reversal.[87]

Even though Hansen's deposition testimony did not create an ambiguity sufficient to override the language of the release, the supreme court concluded, as a matter of policy, that "boilerplate universal release language such as that used here is circumstantially ambiguous."[88] The court then went on to examine the methods used by other jurisdictions for determining the scope of a general release.[89]

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78. *Hansen*, 120 N.M at 206, 900 P.2d at 955.

79. *Id.* at 205-11, 900 P.2d at 954-60.

80. *Id.* at 205, 900 P.2d at 954; for a review of Hansen's alleged grounds for reversal, see *supra* note 18 and accompanying text.

81. *Hansen*, 120 N.M. at 206, 900 P.2d at 955 (citing Ratzlaff v. Seven Bar Flying Serv., Inc., 98 N.M. 159, 646 P.2d 586 (Ct. App.) cert. denied, 98 N.M. 336, 648 P.2d 794 (1982)).

82. *Id.* at 206, 900 P.2d at 955. Hansen relied on the supreme court's decisions in Mark V, Inc. v. Meliekas, 114 N.M. 778, 845 P.2d 1232 (1993), and C.R. Anthony Co. v. Loretto Mall Partners, 112 N.M. 504, 817 P.2d 238 (1991), to support this proposition. *Id.*

83. *Id.*

84. *Id.* (citing Jaramillo v. Providence Washington Ins. Co., 117 N.M. 337, 342, 871 P.2d 1343, 1348 (1994) (stating that a "'unilateral, subjective intent not to include' third parties as beneficiaries of the agreement is not determinative.")).

85. *Id.*

86. *Id.*

87. *Id.* (citing Tsosie v. Foundation Reserve Ins. Co., 77 N.M. 671, 676, 427 P.2d 29, 32 (1967) (stating that the "court will not be reversed when it reaches the right result for the wrong reason")).

88. *Hansen*, 120 N.M. at 206, 900 P.2d at 955.

89. *Id.* at 207-09, 900 P.2d at 956-58.

B. *The Court Reviews Common Approaches to General Release Interpretation*

The Supreme Court noted that in determining which general release interpretation approach it should adopt, the court is not obligated to take the most common approach.[90] Rather, the court stated that it would adopt an approach that best conforms with New Mexico law.[91] On this basis, the court rejected all three approaches used in other jurisdictions, and instead created its own unique approach.[92]

The New Mexico Supreme Court rejected the "flat bar" approach for two reasons.[93] First, the "flat bar" rule was rooted in the common-law notion that releasing one joint tortfeasor released all other joint tortfeasors as a matter of law.[94] Citing *Bartlett*, the Supreme Court noted that this is no longer the law in New Mexico.[95]

Second, the Supreme Court asserted that "giving effect only to the abstractly unambiguous words of an agreement without regard to the actual intent of the parties elevates form over substance."[96] The court reasoned that a tortfeasor who has taken no part in satisfying a plaintiff's claim should not be allowed to benefit from a settlement agreement created at another's time and expense.[97] Finally, the court stated that looking only at the four corners of a release document threatens to override the parties' actual intent.[98]

The Supreme Court considered and rejected the "specific identity" rule, as well.[99] The Court noted that jurisdictions which have adopted the specific identity rule rely partially on their state's adoption of some form of the Uniform Contribution Among Tortfeasors Act.[100] More specifically, the courts which have adopted this rule rely on Section 4 of the Uniform Act which states that: "[a] release of one joint tortfeasor . . . does not discharge the other tortfeasors *unless the release so provides.*"[101] These jurisdictions argue that because the intent of the Uniform Act is to lessen the harsh effect of the common law release rule, the words "unless the release so provides" in the Act should be narrowly

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90. *Hansen*, 120 N.M. at 208, 900 P.2d at 957.
91. *Id.* (citing Griego v. New York Life Ins. Co., 44 N.M. 330, 338, 102 P.2d 31, 36 (1940)).
92. *Id.* at 208-12, 900 P.2d at 957-61.
93. *Id.* at 209, 900 P.2d at 958.
94. *Id.*
95. *Hansen*, 120 N.M. at 209, 900 P.2d at 958 (citation omitted).
96. *Id.*
97. *Id.*
98. *Id.*
99. *Id.*
100. *Hansen*, 120 N.M. at 209, 900 P.2d at 957-958 (citing Young v. State, 455 P.2d 889 (Alaska 1969); Alsup v. Firestone Tire & Rubber Co., 461 N.E.2d 361 (Ill. 1984); Aid Ins. Co. v. Davis, 426 N.W.2d 631 (Iowa 1988); Geir v. Weikel, 603 P.2d 1028 (Kan. 1979)).
101. *Id.* at 209, 900 P.2d at 958 (emphasis added). The courts adopting the specific identity rule note that the intent behind the Uniform Contribution Among Tortfeasors Act is to lessen the harsh effect of the common law rule. These jurisdictions hold that in order to effectuate the legislature's intent, courts should narrowly construe the language "unless the release so provides." To do otherwise, they argue, would perpetuate the common law rule because non settling, unnamed tortfeasors would be released. *Id.* (citing Beck v. Cianchetti, 439 N.E. 2d 417 (Ohio 1982)).

construed.[102] The New Mexico Supreme Court has attributed a similar purpose to the Uniform Act.[103] However, the court agreed with the jurisdictions that have rejected the pure "specific identity" rule on the basis that it "entirely ignores the actual intent of the parties to a general release."[104] While recognizing that this approach may provide greater protection for the unaware or unrepresented plaintiff, the court reasoned that this rule, like the flat bar rule, elevates form over substance.[105]

C. *The General Release after Scott and Bartlett*

The Supreme Court stated that the adoption of comparative negligence eliminated the need for concurrent tortfeasors to obtain the release of other tortfeasors.[106] The Supreme Court noted that prior to *Bartlett*, concurrent tortfeasors could be held liable for the entire damages suffered by a plaintiff.[107] The court further noted that the doctrine of joint and several liability explained the need "for concurrent tortfeasors to secure the release of other tortfeasors in order to secure the former's right to contribution."[108] After *Bartlett*, however, the court recognized that each tortfeasor is now only liable for his portion of damages to a plaintiff, and therefore, any need for contribution among tortfeasors is effectively eliminated.[109] While this seems to indicate specific identity, the court stopped short of adopting the specific identity approach because of its adherence to contract interpretation principles which honor the intent of the parties.[110]

V. ANALYSIS AND POLICY CONSIDERATIONS

In *Hansen*, the Supreme Court adopted a presumption that all boilerplate language in a general release is inherently ambiguous.[111] Therefore, in the absence of specific terminology, "the person seeking to be discharged must prove by extrinsic evidence that the parties to the agreement actually intended to discharge him or her from liability."[112] The court

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102. *Hansen*, 120 N.M. at 209, 900 P.2d at 958.

103. *Id.* (relying on Herrera v. Uhl, 80 N.M. 140, 452 P.2d 474 (1969)).

104. *Id.* at 211, 900 P.2d at 960. The court also noted that for general applicability "it would be inappropriate to decide whether to adopt the specific identity rule or the intent rule based on a statutory construction of the New Mexico Uniform Contribution Among Tortfeasors Act, NMSA 1978, §§ 41-3-1 to 8 (Repl. Pamp. 1989)." The Act only applies to joint tortfeasors as they are defined in Section 41-3-1 of the Act: "two or more persons jointly or severally liable in tort for the same injury." The court assumed, as did the defendants in this case, that because of *Bartlett*, their respective liability would be determined according to principles of proportionate fault. *Id.* at 210, 900 P.2d at 959.

105. *Hansen*, 120 N.M. at 211, 900 P.2d at 960.

106. *Id.*

107. *Id.* at 210, 900 P.2d at 959.

108. *Id.*

109. *Id.* (relying on Wilson v. Gault, 100 N.M. 227, 668 P.2d 1104 (Ct. App.), *cert. quashed*, 100 N.M. 192, 668 P.2d 308 (1983)).

110. *Hansen*, 120 N.M. at 211, 900 P.2d at 960.

111. *Id.* at 212, 900 P.2d at 961.

112. *Id.* at 211, 900 P.2d at 960.

neither adopted the approach set forth in *Perea*, nor any of the three approaches utilized in other jurisdictions. The Supreme Court instead chose an approach which it believed would both conform to the current state of tort law in New Mexico, as well as give the greatest effect to the intent of the parties to the agreement.[113]

A. Analysis

The Supreme Court's rejection of the flat bar approach is not surprising for two reasons. First, with its decisions in *Anthony*[114] and *Mark*,[115] the court has made it clear that when interpreting contractual agreements, its "primary objective . . . is to give effect to the intent of the parties."[116] If determining the intent of the parties means going beyond the four corners of the document, the court will do so.[117] Second, the court recognized that the original reason for including boilerplate release type language no longer exists after the adoption of comparative negligence.[118]

In light of the court's emphasis on determining the actual intent of the parties involved, it is also not surprising that the court rejected a pure specific identity rule.[119] As the court noted, the specific identity rule may ignore the actual intent of the parties to the agreement.[120]

While the court could have adopted either formulation of the intent rule, Justice Ransom instead created a hybrid of the specific identity and the intent rule. The new rule conforms to the specific identity rule in that it creates a presumption that a party is not relieved of liability by the release unless he is specifically identified.[121] By adding the rebuttable aspect to the presumption, Justice Ransom has incorporated a formulation of the intent rule as well.[122] Of the two formulations of the intent rule discussed earlier, Justice Ransom's approach resembles that of those jurisdictions which allow extrinsic evidence to determine the intent of the parties, even when the terms of the agreement are facially unambiguous.[123] The difference is that, after *Hansen*, boilerplate general release language can no longer be considered "facially unambiguous" in New Mexico.[124]

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113. *Id.*
114. C.R. Anthony Co. v. Loretto Mall Partners, 112 N.M. 504, 817 P.2d 238 (1991).
115. Mark V, Inc. v. Meliekas, 114 N.M. 778, 845 P.2d 1232 (1993).
116. *Id.* New Mexico courts have established a liberal approach to document interpretation in other areas of the law, as well. *See, e.g.*, D'Avignon v. Graham, 113 N.M. 129, 823 P.2d 929 (Ct. App. 1991). In *D'Avignon*, the Court of Appeals stated that the purpose of statutory construction is to determine legislative intent, and that both the Court of Appeals and the Supreme Court "have rejected formalistic and mechanistic interpretation of statutory language". Quoting Judge Learned Hand in his concurring opinion, the court writes: "[t]here is no surer way to misread any document than to read it literally." *Id.* at 131, 823 P.2d at 931 (citing Guiseppi v. Walling, 144 F.2d 608, 624 (2d Cir. 1944)).
117. *Mark*, 114 N.M. at 780, 845 P.2d at 1234.
118. *Hansen*, 120 N.M. at 211, 900 P.2d at 960.
119. *Id.*
120. *Id.*
121. *Id.*
122. *Id.*
123. *See supra* note 69 and accompanying text.
124. *Hansen*, 120 N.M. at 206, 900 P.2d at 955.

It is now deemed inherently ambiguous; therefore, extrinsic evidence will always be permitted to prove intent.[125]

The decision in *Hansen* shifts the burden when determining the intended beneficiaries of a release. In *Perea*, the presumption was that an absolute bar was the intent of the parties to a general release, unless an ambiguity could be shown to exist by external evidence.[126] In other words, if the injured party to a general release wanted to show that he had not intended to discharge a nonsettling third party, he would have to establish that an ambiguity existed in the language of the release.[127] The court could then review extrinsic evidence to determine whether an ambiguity existed.[128] If the court determined that an ambiguity did exist, it could then review the evidence to determine the actual intent of the parties to the agreement.[129] After *Hansen*, the burden will be on the nonsettling tortfeasor to show that he was an intended beneficiary of the release, even if the release includes boilerplate language purporting to release the whole world from liability.[130]

B. Policy Considerations

The rules governing general releases in New Mexico have changed dramatically since the adoption of comparative negligence and the abolition of joint and several liability.[131] The adoption of a pure comparative negligence system has eliminated the need for a general release.[132] Therefore, because the need no longer exists, it is good policy to limit the effectiveness of a general release.[133] The *Hansen* decision is a logical step in the evolution of New Mexico tort law.

Another policy consideration behind limiting the effect of a general release is that a contract should enforce the intent of its parties.[134] The boilerplate language used in general releases does not necessarily mirror the intent of the parties to the release.[135] As the court itself stated:

> Such a rule [the rebuttable presumption] best mitigates the harsh effects of the common-law release rule, insures that injured parties have in fact intentionally released claims against third parties, and works no unfair hardship on the party negotiating and receiving the release or the prospective third-party beneficiary.[136]

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125. *Id.*
126. *Perea*, 117 N.M. at 779, 877 P.2d at 585.
127. *See* C.R. Anthony Co. v. Loretto Mall Partners, 112 N.M. 504, 817 P.2d 238 (1991).
128. *Perea*, 117 N.M. at 779, 877 P.2d at 585.
129. *Id.*
130. *Hansen*, 120 N.M. at 211, 900 P.2d at 960.
131. *See Wilson*, 100 N.M. 227, 68 P.2d 1104.
132. *Hansen*, 120 N.M. at 211, 900 P.2d at 960.
133. *Id.*
134. *See* Shaeffer v. Kelton, 95 N.M. 182, 619 P.2d 1226 (1980).
135. *Hansen*, 120 N.M. at 211, 900 P.2d at 960.
136. *Id.*

VI. IMPLICATIONS

The decision in *Hansen* significantly changes the effect of a general release in New Mexico. This change will be seen in at least two ways: (1) boilerplate release language will no longer release unnamed parties, and (2) the decision extends comparative negligence principles in such a way that it may increase the amount of litigation in New Mexico.

A. Boilerplate Language No Longer Releases Unnamed Parties

Prior to *Hansen*, a general release could relieve third parties of liability even if they were not parties to the settlement agreement and were not mentioned in the release.[137] After *Hansen*, the presumption is that a release agreement only releases those parties specifically designated in the agreement.[138] Where the *Johnson* court relied too heavily on the language in the document alone to determine who the agreement actually released,[139] the *Hansen* court has taken the opposite approach.[140] Now, even if the language in a general release plainly states that it is the intent of the plaintiff to release all other possible tortfeasors, this language will be deemed inherently ambiguous.[141] As such, it will not release those tortfeasors unless external evidence is admitted to show that was the parties' intent.[142]

The supreme court stated that parties may still release nonsettling tortfeasors, as long as they use specific identifying terminology.[143] This method assumes, however, that at the time of the settlement agreement, the drafters are aware, at least in a general sense, of all of the potential tortfeasors.[144] Unless an unknown tortfeasor can later demonstrate that he was an intended beneficiary, Justice Ransom's hybrid test has the same effect as the specific identity rule.[145] Of course, under the theory

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137. *Anthony*, 112 N.M. at 508, 817 P.2d at 242.
138. *See Hansen*, 120 N.M. at 211, 900 P.2d at 960.
139. *See supra* notes 46-50 and accompanying text.
140. *Hansen*, 120 N.M. at 211, 900 P.2d at 960.
141. *Id.*
142. *Id.*
143. *Id.* Justice Ransom gives examples of what would be considered specific identifying terminology:

> In this case, for example, Hansen and Pease could have discharged Ford by including language like "and the manufacturers and suppliers of the Releasor"s car and its component parts." In an ordinary automobile accident involving three cars, the owner and/or operator of one of which is unknown to the other two, the settling parties could release the phantom driver by including terminology such as "and the driver and persons responsible for the operation and maintenance of the blue car." Finally, in the case of an automobile accident that appears partially attributable to the presence of foliage obscuring a stop sign, the settling parties could release the persons responsible for the foliage by including terminology like "and the owners, occupiers, and any other person responsible for the upkeep or maintenance of the premises on which the shrubs that obscured Releasee's view of the stop sign were growing."

Id. at 212, 900 P.2d at 961.
144. *Id.*
145. *See Hansen*, 120 N.M. 203, 900 P.2d 952.

of comparative negligence each tortfeasor should be accountable for his or her own conduct.[146] If a party to a general release is not aware of the identity of a joint tortfeasor until after he has executed the release, the joint tortfeasor should still be liable for his conduct.[147]

As previously discussed, part of the rationale behind the court's adoption of the rebuttable presumption is that with the adoption of comparative negligence, and the abolition of joint and several liability, the traditional need for procuring a general release no longer exists.[148] Nevertheless, the decision in *Hansen* will also affect those general release cases in which joint and several liability still does apply.[149]

B. The Hansen Decision May Create More Litigation

Both the specific identity rule and Justice Ransom's rebuttable presumption may create more litigation by permitting plaintiffs to sue parties not specifically named in a general release.[150] The *Hansen* court furthers the doctrine of comparative negligence by holding each tortfeasor liable for his or her respective share of the negligence.[151] Prior to *Hansen*, an unnamed tortfeasor could avoid liability by virtue that a plaintiff made an agreement with another tortfeasor that included boilerplate release language.[152] After *Hansen*, however, even if a release includes boilerplate language purporting to release the whole world from liability, unless a third party is specifically named or designated in a release, the burden is on that third party to prove that he was an intended beneficiary of the release.[153]

The court recognized that general releases without specific identifying terminology have "been used extensively and have been relied on as full and final settlement of all claims."[154] The holding in *Hansen*, therefore, will only apply prospectively, except in cases in which the issue has been preserved.[155]

VII. CONCLUSION

The *Hansen* decision significantly reduces the effect of a general release in New Mexico. The court ruled that all boilerplate language is inherently

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146. *See Scott*, 96 N.M. 682, 634 P.2d 1234.
147. *Id.*
148. *See supra* note 106-10 and accompanying text.
149. *See* Lujan v. Healthsouth Rehabilitation Corp., 120 N.M. 422, 902 P.2d 1025 (1995). *Lujan* is a general release case involving successive rather than concurrent tortfeasors, in which the original tortfeasor is severally liable for the original injury, and also jointly liable for the plaintiff's subsequent, enhanced injury. The court did not directly apply the rule in *Hansen* because the issue had not been preserved. The court did imply, however, that *Hansen* will apply to general release cases in which joint and several liability still exists: "[t]his case also would be reversible under the rebuttable presumption that only specifically designated persons are discharged by a general release." *Id.* at 430, 902 P.2d at 1033.
150. *See generally* Hansen v. Ford Motor Co., 120 N.M. 203, 900 P.2d 952 (1995).
151. *Id.*
152. *Id.*
153. *Hansen*, 120 N.M. at 211, 900 P.2d at 960.
154. *Id.* at 212, 900 P.2d at 961.
155. *Id.*

ambiguous,[156] and adopted a rebuttable presumption that a general release only benefits those parties specifically designated in the release.[157] This decision essentially eliminates the traditional notion of a general release. The court's reliance on the comparative fault doctrine as a motivating factor in its holding reflects the pervasive effect of this doctrine in many areas of New Mexico law.

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156. *Id.*
157. *Id.*