

## Your Release May Not Be as Broad as You Think

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In *Iqbal v Ziadah* (2017) 10 Cal.App.5th 1, plaintiff was hired by a used car lot, Yosemite Auto, to determine why a car recently towed to the lot would not start. Unbeknownst to plaintiff, the tow truck operator had disconnected the transmission shift linkage to do so. The tow truck operator then failed to reconnect the shift linkage after towing the car. Plaintiff confirmed the car was in “park” and crawled underneath it to determine why it would not start. When he tested the electrical connection to the starter, the vehicle immediately ran over him and dragged him through the used car lot, crushing his spine.

Plaintiff sued Yosemite Auto and the tow truck operator. All defendants were dismissed with prejudice after the insurer for Yosemite Auto agreed to pay its \$1 million policy limits. The settlement agreement released all defendants from liability “including, without limitation, any and all known or unknown claims . . . .” Significantly, the release included within its scope the defendants’ “affiliates” and “all other persons, firms, or

corporations, with whom any of the former have been, are now or may hereafter be affiliated.”

Within a matter of months, plaintiff filed a second action against the owner of the property where the accident occurred. Plaintiff based this action on the same facts as his first action, and sued the property owner for negligence and premises liability. At the time of the accident, Yosemite Auto had leased the property from the owner who had previously operated the used car lot. Upon leasing the property, the property owner had left several vehicles on the lot for Yosemite Auto to sell on consignment. The car that injured plaintiff was one of those vehicles. Moreover, the property owner was the person who recommended plaintiff to Yosemite Auto to fix the car.

The property owner filed a motion a motion for summary judgment contending he was an “affiliate” and third party beneficiary of the settlement agreement and release resolving the first action. His evidence consisted of a declaration by defense counsel for Yosemite Auto who said he always intended the property owner to be included in the release. Plaintiff’s counsel submitted a declaration stating, among other things, the property owner was never part of the settlement discussions or settlement. The trial court granted summary

judgment. The Court of Appeal reversed.

The Court first found an “affiliate” generally is one who is dependent upon, subordinate to, an agent of, or part of a larger or more established organization or group. This is a closer association than that of the property owner who had only a contractual relationship with Yosemite Auto. There was no evidence those contracts, a lease and a consignment agreement, made the property owner dependent upon, under the control of, an agent of, or a part of Yosemite Auto.

Further, the Court found the release benefited the former defendants’ “present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms, or corporations, with whom any of the former have been, are now or may hereafter be affiliated.” To interpret “affiliate” as meaning one who has only a contractual relationship with the former defendants would have been inconsistent with the intent demonstrated by the remainder of the release.

Finally, and perhaps the most compelling evidence, plaintiff and the former defendants agreed to keep the settlement terms confidential. They agreed neither they nor their attorneys or

representatives would reveal “to anyone” any terms of the settlement agreement, including the release, unless otherwise mutually agreed in writing. The Court noted a party who was not supposed to know anything about an agreement (i.e. the property owner) could not reasonably expect to benefit from it.

Based on this extrinsic, objective evidence, the Court found the parties had no intention to include the property owner as part of the release and “immunize” him.

### **Take Away from the Decision:**

First, in most commercial landlord-tenant leases, the lessee is typically obligated to defend, hold harmless and indemnify the lessor against any and all claims occurring on the property while under the control of the lessee. Further, the lessee is usually also required to name the lessor as an additional insured under the lessee’s general liability policy. Now, this case arose out of a freak accident that did not necessarily have anything to do with the property and the property owner was not named as a defendant in the first action; thus, it may have never occurred to defense counsel to specifically name the property owner in the release. That said, if Yosemite Auto were required to defend, hold harmless, indemnify, and insure the property owner pursuant to their lease, then Yosemite Auto or its insurer may well be paying twice for this loss.

Second, the use of the term “affiliated” in the release was

unfortunate. After paying \$1 million to resolve the claim, defense counsel undoubtedly intended to cut off any and all future claims or lawsuits arising out of the incident and “immunize” anyone who could possibly be named. Counsel may have been better off using a release similar to the one used in *General Motors Corp. v. Superior Court* (1993) 12 Cal.App.4th 435.

In *General Motors*, plaintiff’s wife died as a result of an accident with another driver. Plaintiff, represented by counsel who had earlier notified GM of a possible products liability claim, settled with the other driver involved for \$25,000. The release signed by the plaintiff released the driver and “any and all persons, firms, and corporations” from liability for the accident. Plaintiff then sued GM. GM filed a motion for summary judgment contending the release signed by plaintiff released GM as well. Plaintiff’s counsel submitted a declaration stating the intention of the parties was to release only the other driver, never GM. The trial court denied GM’s motion. GM filed a writ. The Court of Appeal directed the trial court to set aside its denial of summary judgment for GM and to grant the motion for summary judgment. The Court held plaintiff presented no evidence raising a triable issue of fact the language of the release did not encompass all persons or entities, including GM.

## **ABOUT THE AUTHOR**

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