

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Amal Bile,

Plaintiff,

v.

Civ. No. 03-2896 (JNE/JGL)
ORDER

Nissan Motor Co., Ltd., Nissan Motor Corporation
in U.S.A., Nissan Motor Manufacturing Corporation,
U.S.A., and Nissan North America, Inc.,

Defendants.

Michael Fay, Esq., McSweeney & Fay, P.L.L.P., and Lawrence Baron, Esq., Lawrence Baron Attorney At Law, P.C., appeared for Plaintiff Amal Bile.

Malcolm E. Wheeler, Esq., Wheeler, Trigg & Kennedy PC, Denver, Colorado, and Kim Schmid, Esq., Bowman and Brooke, LLP, appeared for Defendants Nissan Motor Co., Ltd., Nissan Motor Corporation in U.S.A., Nissan Motor Manufacturing Corporation, U.S.A., and Nissan North America, Inc.

Amal Bile brought this products liability action against Nissan Motor Co., Ltd., Nissan Motor Corporation in U.S.A., Nissan Motor Manufacturing Corporation, U.S.A., and Nissan North America, Inc. (collectively, Defendants) for personal injuries sustained when the 1994 Nissan Altima automobile (the Altima) in which she was a passenger was involved in an accident. The case is before the Court on Defendants' motion for summary judgment. For the reasons set forth below, the Court denies the motion.

I. BACKGROUND

On June 11, 2001, the Altima, driven by Bile's husband Abdi Hassan, collided with a 1996 Toyota Celica driven by Larry Shahan. Bile was the front passenger in the Altima, and the force of the collision deployed the passenger-side airbag. As a result of the accident, Bile permanently lost sight in her left eye. State Farm Insurance Company insured all of the parties

involved in the accident.

On May 21, 2002, Bile settled her claim against Shahan and in exchange, received \$100,000, the full extent of his insurance policy. At that time, Bile signed a *Pierrenger* release as to Shahan. On May 29, 2002, Bile settled her claim against Hassan for a payment of \$50,000, which was also the full amount of his insurance policy. Bile signed two releases that day; first, a *Pierringer* release as to Hassan, and second, a general release requested by State Farm. On July 1, 2002, Hassan settled his case against Shahan for \$5,000.00. At that time, Bile signed a second general release, again provided by State Farm—this one based on Hassan’s \$5,000 settlement. Defendants were not parties to any of the above settlements and became aware of the accident in April 2003. In October 2003, Bile received \$50,000.00 from State Farm for underinsured motorist coverage.

II. DISCUSSION

Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). The moving party “bears the initial responsibility of informing the district court of the basis for its motion,” and must identify “those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party satisfies its burden, Rule 56(e) requires the nonmoving party to respond by submitting evidentiary materials that designate “specific facts showing that there is a genuine issue for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). In determining whether summary judgment is appropriate, a court must look at the record and any inferences to be drawn from it in the light most favorable to the nonmoving

party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

Defendants assert they are entitled to summary judgment based on the language of the general releases. Both the May 29, 2002 and July 1, 2002 general releases use the following language:

[T]he undersigned hereby releases and forever discharges [settlement party name] their heirs, executors, administrators, agents and assigns, and all other persons, firms or corporations liable or who might be claimed to be liable, none of whom admit any liability to the undersigned but all expressly deny any liability from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever and particularly on account of all injuries, known and unknown, both to person and property, which have resulted or may in the future develop from an accident which occurred on or about the 11th day of June 2001 at or near Eden Prairie, MN.

Under Minnesota law, release of one alleged tortfeasor will release all others *if* the settlement agreement manifests such an intent *or if* the plaintiff received full compensation in law or in fact for damages sought against the remaining tortfeasors. *See, e.g., Johnson v. Brown*, 401 N.W.2d 85, 88 (Minn. Ct. App. 1987); *Somora v. Marriott Corp.*, 812 F. Supp. 917, 924 (D. Minn. 1993) (citing *Luxenburg v. Can-Tex Indus.*, 257 N.W.2d 804, 807 (Minn. 1977)).

Defendants contend that the clear language of the general release signed in this case leaves no doubt as to the intent of the release. In support, they rely on *West American Ins. Co. v. Ford Motor Co.*, 759 F. Supp. 547 (D. Minn. 1991) which described this same general release language as “simple and straightforward.” *Id.* at 555. Defendants thus argue that this Court need look no further than *West American* to resolve this instant motion. However, this same language has been in routine use since 1970 as evidenced by its use in *Gray v. Gen. Motors Corp.*, 43 F.2d 110, 112 (8th Cir. 1970).¹ Accordingly, analysis of whether this suit is precluded by the language of the release may not end with a single reading of the language.

¹ The release language does not appear in the Eighth Circuit's opinion. It is in the District Court's October 28, 1968, Order which denied General Motors' motion for summary judgment.

In *Couillard v. Charles T. Miller Hospital*, 92 N.W.2d 96 (Minn. 1958), the Minnesota Supreme Court laid the groundwork for going beneath the language of the release, stating:

[T]he fact that an injured person has signed a release in general terms will not prevent him from showing by parol evidence that he was never compensated for and never intended to release claims based on injuries caused by the subsequent tortfeasor for which the releasee is also liable because of the rules of proximate cause.

Id. at 97. Nor is the rule dependant upon there having been a subsequent injury:

We think that considerations of practical justice require us to say that a plaintiff should not be compelled to surrender his claim for relief against a wrongdoer unless *he has intentionally done so*, or unless *he has received full compensation* for his claim. Of course, where full satisfaction has been made, or where it is agreed that the amount paid under the release is accepted in full satisfaction, no claim should remain against any tortfeasor. But these are questions of fact to be resolved by the jury.

Id. at 102 (emphasis supplied). Any question that *Couillard* applies only in unknown or separate injury situations is put to rest by *Gray*, which applied *Couillard* under facts closely related to those at issue here. *Gray*, 434 F.2d at 112.

Defendants allege that since the advent of the *Pierringer* release, *Gray* and *Couillard* no longer accurately state the law in Minnesota with respect to releases. Eight years after *Gray*, Minnesota specifically adopted the *Pierringer* release in *Frey v. Snellgrove*, 269 N.W.2d 918 (Minn. 1978). A *Pierringer* release is one in which a plaintiff may settle his claims against some tortfeasors while reserving the remainder of his cause of action against the non-settling tortfeasors. *See Frey*, 269 N.W.2d at 921. Defendants argue that the recognition of the *Pierringer* release altered the legal landscape with regard to general releases. That assertion, however, is not borne out by subsequent Minnesota state court cases that continue post-*Frey*, to apply *Couillard*. *See, e.g., Johnson*, 401 N.W.2d at 89 (“It seems the trial court concluded that in the absence of a *Pierrenger* release the parties prior settlement automatically released all joint

tortfeasors. The trial court failed to determine whether the parties to the prior settlement intended such a result or whether appellants had already been fully compensated.”). Given this, the Court concludes that *Gray* continues to represent an accurate statement of Minnesota law on this point.

Defendants argue that *West American* cannot be harmonized with *Gray* and that *West American* more accurately states the current law in Minnesota. In *West American*, the victim had been fully compensated for her injuries, and her insurer brought a subrogation action against Ford Motor Company. There, the lawsuit was specifically contracted in the release. *West American*, 759 F. Supp at 550 (“[S]he assigned to West American ‘any and all causes of action and claims for relief against Ford Motor Company, or any other third party, which is alleged, or may be alleged, to have caused or contributed to the injuries she sustained arising out of the automobile accident on December 2, 1984.’”). Applying a five-factor test put forth in *Sorensen v. Coast-to-Coast Stores*, 353 N.W.2d 666 (Minn. Ct. App. 1984), this Court determined that no genuine issue of material fact existed as to the intent of the release. *West American*, 759 F. Supp at 551-552. Defendants here urge a similar approach; namely that this Court should conduct a straightforward five-factor *Sorensen* analysis and leave it at that. Given the post-*Sorensen* pronouncements of the Minnesota appellate court continuing to apply *Couillard*, the task is not so simple. See e.g., *Johnson*, 401 N.W.2d at 88; *Clark v. Allstate Ins. Co.*, 405 N.W.2d 463, 465-66 (Minn. Ct. App. 1987). *Sorensen* concerned a release in the context of canceling a franchise agreement and contains analysis relevant to a contract claim. *Sorensen*, 353 N.W.2d at 668. Likewise, *West American* applied Minnesota law relating to contract, rather than tort releases. Here, Bile’s product liability claims more closely approximate the claims in *Gray* than

the claims in *West American*. See *Somora*, 812 F. Supp. at 921-22, 924 (applying *Sorensen* factors to release in discrimination suit, but distinguishing cases involving tort liability).

The second prong of the *Johnson* test is whether the victim received full compensation. Defendants urge this Court to adopt an interpretation of full compensation in law or in fact that means “more than nominal” or constituting adequate consideration for the contract. The Court is not persuaded that such a reading is consonant with Minnesota law. The genesis of the second factor is the concern in the tort context about double recovery, which is what underlay the traditional rule that release of one tortfeasor constitutes the release of all. See generally, *Couillard*, 92 N.W.2d at 99; *Johnson*, 104 N.W.2d at 89. The Court is persuaded that to throw out all such considerations in favor of a test that merely looks for adequate contractual consideration would not be a fair interpretation of Minnesota state law. That is particularly true when the claim is made by one who was not a party to the release. See *Pemberton v. Theis*, 698 N.W.2d 692, 694-95 (Minn. Ct. App. 2003).

In sum, Defendants’ arguments that this Court should grant summary judgment by applying principles of contract law, rather than tort law, is unavailing. Because questions of material fact exist as to the intent of the parties signing the general release and whether Bile has been fully compensated, the Court denies Defendants’ motion for summary judgment.

III. CONCLUSION

Based on the files, records, and proceedings herein, and for the reasons stated above, IT
IS ORDERED THAT:

1. Defendants' motion for summary judgment [Docket No. 23] is DENIED.

Dated: June 8, 2004

S/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge