Associates dated February 19, 1986 and recorded in Franklin County Deed Book 288C, page 1132.

BEING the same real estate conveyed to John C. Hillyer and Rulla M. Hillyer, husband and wife, by deed of John C. Hillyer, dated October 24, 1988 and recorded in Franklin County Deed Book 1033, page 182.

**SALE # 10**
**Writ # 1995-380**
**Rousseau Mortgage Corporation**
**VS**
**Richie Montalvo**
**Atty: Frank Fedderman, Esq.**

ALL THE FOLLOWING described real estate SITUATE in Waynesboro, Franklin County, Pennsylvania, bounded and described as follows:

TRACT NO. 1: BEGINNING at a point at the southeastern curbline of North Grant Street; thence along said curbline, North 31-1/4 degrees East 25.8 feet to a cut in the curbline; thence along lot now or formerly of Strites, south 69 degrees East 34 feet to an iron pin; thence continuing along lot now or formerly of Strites, South 63 degrees 45 minutes East 122.9 feet to an iron pin at lands now or formerly of Daniel Stoner Estate; thence along lands now or formerly of Daniel Stoner Estate, South 31-1/4 degrees West 25.8 feet to an iron pin; thence along lands now or formerly of Bakners, North 64 degrees west 156 feet to the point and place of beginning.
TRACT NO. 2: BEGINNING at a corner of Tract No. 1 now or formerly in the Daniel Stone Estate; thence North 63 degrees 45 minutes West 20 feet to an iron pin; thence along lands now or formerly of Strites, North 31-1/4 degrees East 25.7 feet to a post at a 12 foot public alley; thence along the South side of the 12 foot public alley, South 64 degrees 25 minutes East 20 feet to an iron pin; thence along lands now or formerly of Daniel Stoner Estate, South 31-1/4 degrees West 25.7 feet to the iron pin at the place of beginning.
TAX ID # 5A - 64 parcel 64.
HAVING thereon erected a dwelling known as 28 North Grant Street, Waynesboro, PA 17268.
TITLE to said premises is vested in Richie Montalvo by Deed from Richie Montalvo and Ruth L. Montalvo, his wife, dated 12/28/92 and recorded 2/4/93 in Deed Book Volume 1172, Page 250.
SEIZED in execution and to be sold as the premises of Richie Montalvo.

**SALE # 11**
**Writ # AD 1995-437**
**Chambersburg Trust Company**
**VS**
**Marvin G. Amsley & Patricia K. Amsley &**
**The United States of America**
**Atty: Timothy Misner, Esq.**

ALL the following described real estate lying and being situate in St. Thomas Township, Franklin County, Pennsylvania, bounded and limited as follows:

BEGINNING at an iron pin at lands of Richard Garland; thence by lands of said Garland, North 72 degrees West, 235.5 feet to an iron pin; thence by lands of the same, North 13 degrees 8 minutes East, 220.2 feet to an iron pin; thence by lands of the same and lands of Pine, South 75 degrees 59 minutes East, 236.7 feet to an iron pin; thence by lands of Garland, South 14 degrees 8 minutes West, 230.0 feet to an iron pin at lands of the said Richard Garland, the place of beginning; CONTAINING 1.21 acres as appears by draft of John H. Atherton, R.P.E., of the Commonwealth of Pennsylvania, from survey made February 6, 1968.

BEING the same real estate conveyed to Marvin G. Amsley and Patricia K. Amsley, husband and wife, by deed of William C. Laney, dated March 28, 1990 and recorded in Franklin County Deed Book 1078 Page 14.

TOGETHER WITH the right to use the existing right-of-way for ingress, egress and regress to LR 28008, which extends over land of Richard G. Garland and wife, known as Parcel I as shown on subdivision plan recorded in Franklin County Deed Book Volume 288-C, Page 312, as reserved by Calvin L. Mackey and wife in deed to Richard G. Garland and wife dated June 14, 1982 and recorded in Franklin County, Deed Book Volume 860, Page 66.

Improved with a one story dwelling and having a street address of 445 Apple Way, St. Thomas, Pennsylvania 17254.

**TERMS**

**As soon as the property is knocked down to purchaser, 10% of the purchase price or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.**

**The balance due shall be paid to the Sheriff by NOT LATER THAN June 24, 1996 at 4:00 PM, prevailing time. Otherwise all money previously paid will be forefeited and the property will be resold on June 28, 1996, 1:00 PM, prevailing time, in the Franklin County Court House, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be the higher, shall be paid in full.**

Robert B. Wollyung, Sheriff
Franklin County
Chambersburg, PA
5/24, 5/31, 6/7/96

MICHAEL R. GARTLAND and SUSAN K. GARTLAND, his wife, Plaintiffs vs, DR. JOEL L. ROSENTHAL, J.C. BLAIR MEMORIAL HOSPITAL, DR. RICHARD R. DI DONATO, THE CHAMBERSBURG HOSPITAL and DR. NITEEN N. SUKERKAR, Defendants, Franklin County Branch, Civil Action - Law A.D. 1993 -229

*Gartland v. Rosenthal, et al.*

General Releases - Medical Malpractice

1. In order to gain the benefit of a general release to which they were not parties, defendant medical providers must show that the injury for which they are potentially liable was caused by the event which is the subject of the general release.

2. Unrelated causes of action, even if caused by parties contemplated at the time of the release, are not covered by the same general release.

3. A cause of action accruing after the execution of a general release could not have been in the contemplation of the parties to the release at the time of execution. Therefore, a release executed following an injury cannot cover subsequent causes of action for medical malpractice in treatment of that injury since a medical malpractice action accrues upon discovery.

*Charles E. Evans, Esq.*, counsel for plaintiffs
*Conrad W. Varner, Esq.*, counsel for Dr. Rosenthal
*John E. Nedlik, Esq.*, counsel for J.C. Blair Memorial Hospital
*Patricia L. Haas, Esq.*, counsel for Dr. DiDonato
*Kevin E. Osborne, Esq.*, counsel for Chambersburg Hospital
*S. Walter Foulkrod III, Esq.*, counsel for Dr. Sukerkar

OPINION AND ORDER

WALKER, P.J., June 4, 1996

**Findings of Fact**

Mr. Gartland alleges that the defendants negligently failed to diagnose and treat a cancerous tumor. Mr. Gartland suffers from seizures, the first of which occurred six weeks after an automobile accident which occurred on May 26, 1987.

The plaintiff's vehicle was struck from the rear by Arnold Gutshall, an employee of Boyd E. Diller, Inc. Plaintiff was treated for injuries to several parts of his body, including his head, by the defendants. The defendants did not find the cancerous tumor, despite its presence on medical diagnostic films. Dr.

Rosenthal's treatment of the seizure symptoms using tegretol and phenobarbital succeeded in keeping Mr. Gartland free of seizures for a period of time, but in 1992, Mr. Gartland sought the aid of his family physician, Dr. Daryl White. Dr. White referred him to Dr. Steven Powers at the Hershey Medical Center, who found the cancerous tumor. Dr. Powers also reviewed the previous CT scans, taken during the defendants' treatment of Mr. Gartland, and found the tumor clearly present on those. Until Dr. Powers diagnosed the tumor, Mr. Gartland was unaware of the tumor. Dr. Rosenthal had gone over the two CT scans, of September 1987 and February 1989, and stated to the plaintiff that the gray area was probably present since birth, but could also have been some dried blood.

On February 5, 1990 Mr. Gartland executed a release, which stated, in pertinent part:

> We . . . do, severally and jointly, for ourselves and our heirs, executors, administrators, and assigns do hereby remise, release, and forever discharge *Arnold Gutshall and Boyd E. Diller,Inc* . . . . and all other persons, firms, and corporations, of and from any and all claims, demands, rights and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property, and the consequences thereof, resulting and to result, from a certain accident which happened on or about the *26th* day of *May* in the year *1987*, for which we have claimed the said *Arnold Gutshall and Boyd E. Diller, Inc.* , releasee (s) to be legally liable, which liability is hereby expressly denied.

Motion for Summary Judgment, Exhibit A. (underlining in original.

The defendants have raised this release as an affirmative defense.

**Discussion**



The legal question before the court on this motion for summary judgment concerns the effect of a general release executed to settle a claim from an automobile accident on a medical malpractice claim against health care providers who failed to diagnose and treat a cancerous brain tumor. The defendants claim that the language of the release is broad enough to release them, under Pennsylvania law, even though they were not parties to the settlement negotiations, and did not provide consideration for the release.

The starting point for the court in any tortfeasor release case is a reading of the release itself, the relevant portions of which have been reproduced above. The critical language here states:

> we . . . do, severally and jointly, for ourselves and our heirs, executors, administrators, and assigns do hereby remise, release, and forever discharge *Arnold Gutshall and Boyd E. Diller, Inc* . . . . and all other persons, firms, and corporations, of and from any and all claims, demands, rights and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property, and the consequences thereof, resulting and to result, from a certain accident which happened on or about the *26th* day of *May*, in the year *1987*, for which we have claimed the said *Arnold Gutshall and Boyd E. Diller, Inc.* releasee(s) to be legally liable, which liability is hereby expressly denied.

Motion for Summary Judgment, Exh. A (underlining in original).

The addition of the phrase, "and all other persons, firms, and corporations", along with the broad language concerning claims and injuries, is what marks this document as a general release.

A release, of course, is a contract and therefore it must be construed according to general contract principles. *Harrity v. Medical College of Pa. Hosp.*, 439 Pa.Super. 10, 20, 653 A.2d 5 (1994).

A contract, and consequently a release, are construed according to the plain meaning of the terms it contains. *Estate of*

*Bodnar*, 472 Pa. 383, 387, 372 A.2d 746, 748 (1977) . Here the terms do include all persons and all claims, provided that the injury is one "resulting or to result, from" the accident in May 1987. Therefore, the question before the court becomes a question of interpretation of whether the misdiagnosis resulted from the injuries caused by the accident. The Gartlands state that the language is one of causation, and the defendants must show that the cancerous tumor, and thus the subsequent misdiagnosis, were caused, in legal terms, by the accident. The defendants urge the court to review the terms as indicating only a relationship between the claim and the accident.

In contract interpretation, where a term, apparently clear on its face, is capable of two differing and inconsistent meanings, the disputed term is considered a latent ambiguity. "A contract is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense." *Hutchison v. Sunbeam Coal Co.*, 513 Pa. 192, 201, 519 A.2d 385, 390 (1986) (citations omitted). Both readings of the releases language, "resulting and to result", are reasonable, and therefore, the language is ambiguous.

Ambiguities, in contract interpretation, are resolved most strongly against the drafter. *Rusiski v. Pribonic*, 511 Pa. 383, 390, 515 A.2d 507, 510 (1986) . Here, the drafter was the insurance company for Arnold Gutshall and Boyd E. Diller, Inc., Travelers Life Insurance Company, as revealed by the language of the release itself. By seeking to raise the release as an affirmative defense to this suit, the defendants here have placed themselves in privity with Arnold Gutshall and Boyd E. Diller, Inc., and the defendants cannot claim any more rights under the release than either Gutshall or his employer could. Therefore, the court will resolve the ambiguity against the defendants, and agree with the plaintiffs that more causation than a mere relationship must be shown.

The defendants therefore, in order to be covered by the language of the release, must show that the cancerous tumor was caused by the accident. This they have failed to do, as traumatic head wounds have not been medically shown to have caused cancerous tumors of the brain.



The defendants have strenuously argued that they are covered under the release because of the general language covering all persons, etc., and that because the doctors were treating Mr. Gartland for his injuries from the vehicle accident at the time of the misdiagnosis, the activity of treatment and diagnosis is covered as well for the tumor. However, the cases presented to the court do not show that unrelated causes of action, even if caused by parties contemplated at the time of the release, are covered by a general release. For example, in *Brown V. Herman*, the Superior Court found that a release in a products liability action covered subsequently medical malpractice in treating impotence, because the plaintiff named impotence as a result of his mishap with the product, which was a fall from an allegedly defective stool. ____Pa.Super. at ____, 665 A.2d at 507-508. As the court said,

> . . . The true issue in this case is not whether the release forecloses future claims for injuries suffered when Mr. Brown fell from the stool, because it surely does, but whether the impotence suffered by Mr. Brown was caused by his fall from the stool. If the impotence was so caused, then Mr. Brown's right to sue for the negligent implantation of the prothesis, which was a treatment for the impotence, is precluded by the release.

In contrast, *Porterfield v. Trustees of the Hosp. of the University of Pennsylvania* held that a general release did bar a subsequent medical malpractice action, where the malpractice occurred in the context of treatment for the injuries the plaintiff sustained in the underlying automobile accident. 441 Pa.Super. 529, 657 A.2d 1293 (1995) . The court specifically noted that the treatment was sought as a consequence of the injuries received in the auto accident. *Id.* at 533, 657 A.2d at 1295.

Furthermore, the court noted in *Porterfield* that the cause of action had accrued at the time the release was executed. *Id.* This raises an alternative ground for this court's decision. A release covers all matters in the contemplation of the parties at the time of the release. *Vaughn v. Didizian*, 436 Pa. Super. 436, 439, 648 A.2d 38, 40 (1994) . If the cause of action accrues afterward, it

cannot have been in the contemplation of the parties. *Vaughn* at 440-441, 648 A.2d at 40-41.

As we noted in the recent case of *Brant v. McLucas*, 13 Franklin Co. L.J. __; 190 P.L.W. 655 (1996), a medical malpractice action does not accrue until the plaintiff discovers it. This principle has been applied in general release situations. *Youngren v. Presque Isle Orthopedic Group, Inc.*, 876 F.Supp. 76, 79-80 (W.D. Pa. 1995).

Here, the plaintiff did not discover the misdiagnosis. In any case, it is absurd to assume that a plaintiff was considering the possibility of the misdiagnosis by a doctor of a cancerous tumor at the time of the execution of the release for injuries caused by an auto accident. Nothing in this record shows any such contemplation.

Therefore, because the record does not show that the misdiagnosis was caused by the injuries sustained in the accident, or, in the alternative, that the cause of action had not accrued, and was not in the contemplation of the parties at the time of the signing of the release, the motion for summary judgment must be denied.

ORDER OF COURT

June 4, 1996, defendants' motion for summary judgment is denied.