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Beware of Boilerplate Language: The Impact of Expansive Release Terms

Lawyers often rely on forms and templates to speed up the time spent drafting legal documents. While using forms can save clients' money and likely ensure the language used has been vetted and approved by the firm and its colleagues, it also can create a false sense of security that the boilerplate language will apply to situations beyond its initial use. Attorneys often assume it is appropriate for a given case without pausing to consider whether the language should be customized for a client's specific situation. A recent decision by the Westchester Supreme Court Commercial Division illustrates the dangers of relying on boilerplate language when it comes to releases and, in particular, the definitions of the "releasing" and "released" parties.

The Case: *Cornell v. Kramer Levin Naftalis & Frankel, LLP*

In *Cornell v. Kramer Levin Naftalis & Frankel, LLP*, Michael Cornell and three corporate entities brought suit against their former attorneys. The defendant law firm moved to dismiss the amended complaint against all four plaintiffs based on, in part, a prior release of claims executed by Cornell. Although only Cornell signed the release, he did so on behalf of numerous categories of entities and individuals, including all "affiliates." In analyzing the motion to dismiss, Justice Gretchen Walsh answered two questions: (1) can an individual have "affiliates" and (2) were the corporate defendants "affiliates" of Cornell.

On the first question, Justice Walsh rejected the plaintiffs' position that people cannot have affiliates. Interestingly, the court reached that result based on the conventional definition of the word in the Merriam-Webster Dictionary rather than the legal definition of the word in Black's Law Dictionary. Turning to the second question, Justice Walsh noted the general tenet that a contract, including a release, can only bind a party who signed the contract or one whose representative or alter ego signed the contract. Here, none of the corporate entities were parties to the release, so the court looked to Cornell's control over each entity. Finding two of the three corporate entities were controlled by Cornell as founder and managing member, Justice Walsh dismissed those entities from the litigation. As to the third, however, based on the complaint's allegations, Cornell no longer controlled that entity and so it was not an "affiliate" for the purpose of the release.

Takeaway

A court's interpretation of a single word – here affiliate – in a release can have dramatic consequences for litigants. While it is impossible to predict all future interpretations of a document, attorneys should not ignore the boilerplate language and take it for granted. Forms and templates should be carefully reviewed to make sure the language accurately applies and does not require tailoring to a client's unique situation.