CASE NOTE

RELEASE AND CONTRIBUTION—A General Release Purporting to Discharge One Tortfeasor and All Others Who Might Be Liable Does Not Effectively Release an Unnamed or Otherwise Unidentified Tortfeasor; Since the Unnamed Tortfeasor Has Not Been Released, Action for Contribution Cannot Be Maintained Against Him Under Sections 668.5 and 668.6 of the Iowa Code. *AID Insurance Co. v. Davis County*, 426 N.W.2d 631 (Iowa 1988).

In 1983 an insured of AID Insurance Company (AID) was driving a motorcycle on a public highway in Davis County Iowa.[1] Due to the insured's negligence, the motorcycle left the paved surface of the highway and crashed, seriously injuring the insured's passenger.[2] The passenger's health insurance carrier paid her medical bills.[3] AID determined that its insured was liable for the passenger's injury, procured a general release[4] from the passenger, arranged to reimburse the passenger's health insurer on its subrogation claim, and paid the insured's policy limit of $100,000.[5]

AID then determined that Davis County had negligently maintained the highway, and sent the county written notice of a claim after the injured passenger and her husband declined to make the claim at AID's suggestion.[6]

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1. AID Ins. Co. v. Davis County, 426 N.W.2d 631, 631 (Iowa 1988).
2. *Id.*
3. *Id.*
4. The release in question, entitled "General Release, Husband and Wife," stated that the injured passenger, Tina Chapin, and her husband, Grant Chapin:

> Release[d] and forever discharge[d] _____, successors and assigns, agents, servants and employees, and all other persons, firms or corporations, known or unknown who [were], or might be claimed liable . . . as the result of a certain accident which happened on or about the 7 day of *August, 1983,* for which [they had] claimed the said [*insured*] to be legally liable . . . .

Appendix to Briefs at 33, AID Ins. Co. v. Davis County, 426 N.W.2d 631 (Iowa 1988) (No. 87-937). The blank provided after "discharge[d]" was left empty. *Id.* The couple also signed a parent's release and indemnifying agreement on behalf of their two minor children, which contained similar language. *Id.* at 34.
5. AID Ins. Co. v. Davis County, 426 N.W.2d at 631.
6. *Id.* Contrary to AID's suggestion, the Chapins chose not to commence an action against

AID brought an action for contribution against Davis County, and the jury found that AID, as a representative of the tortfeasor, and the county were each fifty percent at fault.[7] The county made a motion for a directed verdict and a motion for judgement notwithstanding the verdict, claiming that AID failed to satisfy the statutory requirements of section 668.6 of the Iowa Code.[8] The motions were denied.[9]

On appeal the Iowa Supreme Court *held,* reversed.[10] A general release purporting to discharge one tortfeasor and all others who might be liable does not effectively release an unnamed or otherwise unidentified tortfeasor; since the unnamed tortfeasor has not been released, an action for contribution cannot be maintained against him under sections 668.5 and 668.6 of the Iowa Code. *AID Insurance Co. v. Davis County,* 426 N.W.2d 631 (Iowa 1988).

In 1982 the Iowa Supreme Court adopted comparative negligence[11] in *Goetzman v. Wichern.*[12] In 1985, in response to *Goetzman,* the legislature enacted comparative fault legislation, including Chapter 668 of the Iowa Code.[13] Chapter 668 is derived from the Uniform Comparative Fault Act,[14] which incorporates parts of the Uniform Contribution Among Tortfeasors Act.[15]

The court began its analysis by discussing the applicable guidelines for contribution between tortfeasors provided in Iowa's Comparative Fault Act, codified in Chapter 668 of the Iowa Code:[16]

Davis County between the time they signed the general release and the date the statute of limitations expired. Appendix to Briefs at 10-32, AID Ins. Co. v. Davis County, 426 N.W.2d 631 (Iowa 1988)(No. 87-937). By recommending action against Davis county to the injured passenger and her husband, AID exhibited a belief that Davis County's liability to the Chapins had not been discharged by the general release. This seems to be inconsistent with AID's subsequent assertion that AID could seek contribution against the county, since Davis County had been released. *See infra* text accompanying notes 24, 28-29.

7. AID Ins. Co. v. Davis County, 426 N.W.2d at 631. The trial court rendered its decision in AID Ins. Co. v. Davis County, Law No. CL 21711-35-58, in the Iowa District Court for Keokuk County, Judge James P. Rielly presiding.

8. AID Ins. Co. v. Davis County, 426 N.W.2d at 632. IOWA CODE § 668.6(3) (1985) states, in pertinent part: "If a judgement has not been rendered, a claim for contribution is enforceable only upon satisfaction of one of the following sets of conditions: a. The person bringing the action for contribution must have discharged the liability of the person from whom contribution is sought . . . ." *See also infra* notes 19 & 20. All references to the Code by the court were to the 1985 Iowa Code unless otherwise indicated. AID Ins. Co. v. Davis County, 426 N.W.2d at 632, n.1.

9. AID Ins. Co. v. Davis County, 426 N.W.2d at 632.

10. *Id.* at 635.

11. *Id.* at 632.

12. Goetzman v. Wichern, 327 N.W.2d 742 (Iowa 1982).

13. AID Ins. Co. v. Davis County, 426 N.W.2d at 632.

14. *Id.* (citing UNIF. COMP. FAULT ACT, 12 U.L.A. (37-38 Supp. 1988)).

15. *Id.* (citing UNIF. COMP. FAULT ACT, 12 U.L.A. (38 Supp. 1988)).

16. *Id.*

Contribution is permitted between two persons who are liable upon the same indivisible claim for the same harm.[17] The right of contribution is available to a person who settles with a claimant "only if the liability of the person against whom contribution is sought has been extinguished and only to the extent that the amount paid in settlement was reasonable."[18] Percentages of fault may be established by a separate action.[19] If contribution is sought in a case where judgment has not been rendered, it is enforceable upon the condition that "the person bringing the action for contribution must have discharged the liability of the person from whom contribution is sought by payment made within the statute of limitations applicable to the claimant's right of action . . . ."[20]

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17. IOWA CODE § 668.5(1) (1985) provides:

> A right of contribution exists between or among two or more persons who are liable upon the same indivisible claim for the same injury, death, or harm, whether or not judgement has been recovered against all or any of them. It may be enforced either in the original action or by a separate action brought for that purpose. The basis for contribution is each person's equitable share of the obligations, including the share of fault of a claimant, as determined in accordance with section 668.3.

This case was a separate action brought by AID against the alleged joint tortfeasor, Davis County, to establish the respective liability of the parties pursuant to section 668.6(2), *see infra* note 19, and to seek contribution against the county pursuant to section 668.5(1). Appellant's Brief at 1-2, AID Ins. Co. v. Davis County, 426 N.W.2d 631 (Iowa 1988)(No. 87-937).

18. IOWA CODE § 668.5(2) (1985) provides that "[c]ontribution is available to a person who enters into a settlement with the claimant only if the liability of the person against whom contribution is sought has been extinguished and only to the extent that the amount paid in settlement was reasonable." The injured passenger's medical bills totalled over $167,000 at the time of settlement. Appendix to Briefs at 18, AID Ins. Co. v. Davis County, 426 N.W.2d 631 (Iowa 1988)(No. 87-937). Because medical expenses had been paid by Blue Cross/Blue Shield, it had a subrogation claim in excess of $167,000 against any recovery made by the Chapins against third parties. *Id.* at 19.

19. IOWA CODE § 668.6(2) (1985) states:

> If the percentages of fault of each of the parties to a claim for contribution have not been established by the court, contribution may be enforced in a separate action, whether or not a judgment has been rendered against either the person seeking contribution or the person from whom contribution is sought.

No judgment had been rendered against either AID's insured or Davis County at the time AID commenced its action against Davis County for contribution. *See generally* AID Ins. Co. v. Davis County, 426 N.W.2d 631 (Iowa 1988). In fact, no action was pending against AID at the time it settled with the injured passenger and her husband. *See generally id.*

20. IOWA CODE § 668.6(3) (1985) states:

> If a judgment has been rendered, an action for contribution must be commenced within one year after the judgment becomes final. If a judgment has not been rendered, a claim for contribution is enforceable only upon satisfaction of one of the following sets of conditions:
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> a. The person bringing the action for contribution must have discharged the liability of the person from whom contribution is sought by payment made within the period of the statute of limitations applicable to the claimant's right of action and must have commenced the action for contribution within one year after the date of that payment.
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> b. The person seeking contribution must have agreed while the action of the claimant was pending to discharge the liability of the person from whom contribution

The court concluded that a "plaintiff seeking contribution must establish that the defendant's liability to the injured parties has been discharged."[21]

AID and the county disagreed on the effect of the release, citing Iowa Code section 668.7[22] in support of their respective interpretations. Section 668.7 states: "A release . . . entered into by a claimant and a person liable discharges that person from all liability for contribution, *but it does not discharge any other persons liable upon the same claim unless it so provides.*"[23] AID asserted that the release agreement signed by their insured's passenger was unambiguous and the provision "other . . . corporation" discharged Davis County's liability for the accident, while the county claimed the release did not discharge its liability because the statute required specific identification of the released parties.[24] Focusing on the issue of "whether the release in question 'provide[d]' a discharge of the defendant's liability," the court examined three possible interpretations of the statutory phrase "unless it so provides."[25] The parties proposed that: (1) the phrase "other . . . corporation" satisfied section 668.7 and effectively discharged the liability of a tortfeasor who was not named or identified in the release; (2) a specific identification of the nonparty tortfeasor was required to discharge that tortfeasor's liability; or (3) the use of the boilerplate language allowed the court to determine the intent of the parties to the release, through the introduction and consideration of extrinsic evidence.[26]

The court first examined AID's proposition that the release discharged Davis County as an "other corporation" from any possible claims.[27] AID asserted that the boilerplate language "any other person, firm or corporation"[28] was "unambiguous and discharge[d] the liability of any other tortfeasor."[29] The court did not discuss any of the cases cited by AID for this proposition,[30] but noted that in each of the cases cited, it was the *in-*

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is sought and within one year after the date of the agreement must have discharged that liability and commenced the action for contribution.

At trial AID asserted that since the statute of limitations had run on any claim by the Chapins against Davis County before AID sought contribution, and since AID had discharged the county's liability by payment made within the statutory period of limitation, Davis County's liability was extinguished pursuant to 668.6(3)(a). Appendix to Briefs at 26-27, AID Ins. Co. v. Davis County, 426 N.W.2d 631 (Iowa 1988)(No. 87-937). This argument was not addressed by the Iowa Supreme Court on appeal. *See generally* AID Ins. Co. v. Davis County, 426 N.W.2d 631 (Iowa 1988).

21. AID Ins. Co. v. Davis County, 426 N.W.2d at 632.
22. *Id.*
23. *Id.* (emphasis added by the court).
24. *Id.*
25. *Id.* at 633.
26. *Id.*
27. *Id.*
28. *See supra* note 4.
29. AID Ins. Co. v. Davis County, 426 N.W.2d at 633.
30. Douglas v. United States Tobacco Co., 670 F.2d 791 (8th Cir. 1982); Ralkey v. Minne-

jured party—rather than another tortfeasor (such as Davis County) attempting to avoid an action for contribution—who asserted the release did not effectively discharge all other claims.[31]

The court had not previously interpreted the language of section 668.7 requiring particularity in a release in order to discharge a nonparty

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sota Mining & Mfg., 63 Md. App. 515, 492 A.2d 1358 (1985); Battle v. Clanton, 27 N.C. App. 616, 220 S.E.2d 97 (1975).

In *Douglas* the Eighth Circuit held that a general release containing language similar to that in the AID release satisfied the requirements of the Arkansas statute, adopted from the Uniform Contribution among Tortfeasors Act(hereinafter UCATA), so that the liability of a tortfeasor not named in the release was discharged and the named tortfeasor could recover contribution. Douglas v. United States Tobacco Co., 670 F.2d at 794. The court stated, "[t]he majority of cases from other jurisdictions have held that language releasing any and all persons in addition to the named parties satisfies the requirement of the Uniform Act 'unless the release so provides.' " *Id.* (citing Morison v. General Motors Corp., 428 F.2d 952 (5th Cir.), *cert. denied*, 400 U.S. 904 (1970); Doganieri v. United States, 520 F.Supp. 1093 (N.D.W. Va. 1981); Stefan v. Chrysler Corp., 472 F. Supp. 262 (D. Md. 1979), *aff'd.* 622 F.2d 587 (4th Cir. 1980); Fuls v. Shastina Properties, Inc., 448 F. Supp. 983 (N.D. Cal. 1978); Dorenzo v. General Motors Corp., 334 F. Supp. 1155 (E.D. Pa. 1971); Bonar v. Hopkins, 311 F. Supp. 130 (W.D. Pa. 1969), *aff'd*, 423 F.2d 1361 (3d Cir. 1970); Peters v. Butler, 253 Md. 7, 251 A.2d 600 (1969); Johnson v. City of Las Cruces, 86 N.M. 196, 521 P.2d 1037 (1974); Hasselrode v. Gagney, 404 Pa. 549, 172 A.2d 764 (1961)). The court in *Douglas* noted the policy reasons under the UCATA for allowing an unnamed tortfeasor to be discharged by a general release. *Id.* The court stated, "[t]he defendant who originally procures the release gains nothing if the plaintiff can sue other joint or concurrent tortfeasors. In such a case, the original defendant is left open to claims for contribution and/or indemnity and may wind up having to litigate the case anyway." *Id.* (citing Morison v. General Motors Corp., 428 F.2d 952, 953-54 (5th Cir. 1970)). The court determined that the release in question was unambiguous since it explicitly discharged the named tortfeasor and " 'all other persons, firms, corporations, associations or partnerships' from 'any and all claims, actions, causes of action . . . which the undersigned now has/have or which may hereafter accrue . . . .' " *Id.* at 795. The court concluded, "[i]t must be assumed that the parties intended what is expressed in their writing. The language could be no more forceful." *Id.*

In *Ralkey* a patient executed a general release to settle a Health Claims Arbitration case against her physician. Ralkey v. Minnesota Mining & Mfg., 63 Md. App. 515, ____, 492 A.2d 1358, 1360 (1985). The court considered whether the general release precluded a subsequent product liability claim by the patient against an alleged joint tortfeasor who was not a party to the release. *Id.* At the trial below, the court found that the release language was "plain and unambiguous and that it released the joint tortfeasors." *Id.* at 1366. On appeal the court of Special Appeals of Maryland stated that under the UCATA, the physician and 3M were jointly torfeasors so that 3M was included in the terms which released the physician. *Id.* The court stated that the injured party could have avoided discharging 3M's liability "by simply striking out the offending language (all other persons, firms or corporations), or by specifically limiting the effect of the release to [the physician]." *Id.*

In *Battle v. Clanton*, 27 N.C. App. 616, 220 S.E.2d 97 (1975), the North Carolina Court of Appeals considered the effect of a boilerplate clause in a release under the UCATA. The release specifically named the torfeasors who were parties to the release and "all other persons, firms, or corporations who are or might be liable . . . ." *Id.* at ____, 220 S.E.2d at 99. The court held that the release expressly discharged and released all other tortfeasors from all other claims. *Id.* at ____, 220 S.E.2d at 100.

31. AID Ins. Co. v. Davis County, 426 N.W.2d at 633.

tortfeasor.[32] Consequently, the court examined the law prior to the Uniform Act's adoption, and the reasoning behind the Act's remedy.[33]

The court reviewed the development of Iowa's common law on the effect of a general release when the injured party asserted he did not intend to release an unnamed nonparty tortfeasor.[34] Prior to the enactment of comparative fault legislation, the common law originally recognized that "a full release of one joint tortfeasor satisfied, by operation of law, any claim that the injured party might have against another for the same injury.[35] This rule was abrogated in *Community School District of Postville v. Gordon N. Peterson, Inc.*[36] (hereinafter *Postville*), which held that "the release of an obligor did not automatically release all others who [were] or [might] be liable."[37] The effect of a release was controlled by the intention of the parties, as determined by the contract terms and extrinsic evidence.[38]

The court in *AID* recognized the "harshness of the old rule that gave tortfeasors unintended advantages" and stated that if it adopted AID's interpretation of section 668.7, it would be returning to the original common law rule criticized in *Postville*.[39] The court concluded:

> We do not believe the legislature intended a reincarnation of the doctrine that the release of one tortfeasor releases all others by adopting the Uniform Comparative Fault Act. We choose not to follow those jurisdictions which hold that the boilerplate language in question discharges all other tortfeasors involved in the same event.[40]

Instead, a rule requiring the inclusion of "some specific identification of the tortfeasors to be released in order for them to be discharged" was favored.[41] The nonparty tortfeasors do not have to be specifically named if they are "otherwise sufficiently identified in a manner that the parties to the release would know who was to be benefitted."[42] The court suggested the use of classes such as "employees," "partners," or "officers."[43] The court proscribed the use of the general designation in the AID release, since the phrase "any other person, firm or corporation" did not sufficiently identify

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32. *Id.*
33. *Id.*
34. *Id.*
35. AID Ins. Co. v. Davis County, 426 N.W.2d at 633 (citing Dungy v. Benda, 251 Iowa 627, 636-37, 102 N.W.2d 170, 176 (1960)).
36. Community School Dist. of Postville v. Gordon N. Peterson, Inc., 176 N.W.2d 169 (Iowa 1970).
37. AID Ins. Co. v. Davis County, 426 N.W.2d at 633 (citing Community School Dist. of Postville v. Gordon N. Peterson, Inc., 176 N.W.2d at 175).
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.*
43. *Id.* at 633-34.

the nonparty tortfeasors whom AID and the injured passenger intended to discharge.[44]

The court gave two reasons for its rule.[45] First, by declaring that a tortfeasor is not discharged unless the release "so provides," the legislature indicated that some "proviso or stipulation of the tortfeasors to be released" is necessary.[46] Second, naming or otherwise identifying the nonparty tortfeasors whom the parties intend to release clarifies the parties' rights and reduces the possibility of mistake regarding the effect of the release.[47]

Several jurisdictions which have adopted the Uniform Comparative Fault Act have held that tortfeasors who are not parties to the release must be specifically identified in order to be discharged.[48] In *Beck v. Cianchetti* [49] the statutory phrase "unless its terms otherwise provide"[50] was interpreted by the Ohio Supreme Court to require a release to "expressly designate by name or otherwise specifically describe or identify any tortfeasor to be discharged."[51] The court in *Beck* reasoned that the "thrust of the section is to retain the liability of tortfeasors and, thus, the phrase 'unless its terms otherwise provide' should be narrowly construed and require a degree of specificity."[52] In *Alsup v. Firestone Tire & Rubber Co.*,[53] the Illinois Supreme Court stated that where the statutory language employed was "unless its terms so provide,"[54] the legislature did not intend a release to discharge other nonparty tortfeasors from liability "unless they were designated by name or otherwise specifically identified."[55]

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44. *Id.* at 634.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* (citing Alaska Airlines, Inc. v. Sweat, 568 P.2d 916, 929 (Alaska 1977); Clark v. Brooks, 377 A.2d 365, 373 (Del. 1977); Alsup v. Firestone Tire & Rubber Co., 101 Ill. 2d 196, 201, 461 N.E.2d 361, 364 (1984); Beck v. Cianchetti, 1 Ohio St. 3d 231, 235, 439 N.E.2d 417, 420 (1982); Bjork v. Chrysler Corp., 702 P.2d 146, 162-63 (Wyo. 1985); Robertson v. McCarte, 13 Mass. App. Ct. 441, 444, 433 N.E.2d 1262, 1264 (1982); Sage v. Hale, 75 Misc. 2d 256, 257-58, 347 N.Y.S.2d 416, 418-19 (1973)). The court in *AID* inadvertently stated that these jurisdictions had adopted provisions of the Uniform *Contribution* Act. *Id.*

49. Beck v. Cianchetti, 1 Ohio St. 3d 231, 439 N.E.2d 417 (1982).

50. *See* OHIO REV. CODE ANN. § 2307.32(F)(1)(Anderson 1981). This statute was modeled after the UCATA. Beck v. Cianchetti, 1 Ohio St. 3d at 234, 439 N.E.2d at 419, n.3.

51. Beck v. Cianchetti, 1 Ohio St. 3d at 235, 439 N.E.2d at 420.

52. *Id.*

53. Alsup v. Firestone Tire & Rubber Co., 101 Ill. 2d 196, 461 N.E.2d 361 (1984).

54. ILL. REV. STAT. ch. 70, para. 302(c) (1979).

55. Alsup v. Firestone Tire & Rubber Co., 101 Ill. 2d at 201, 461 N.E.2d at 364. The court did not indicate what would constitute a specific identification. In dicta, the court commented:

> Some may question our holding that a release must specifically identify the other tortfeasors in order to discharge their liability, believing that the tortfeasor taking the release will remain liable to the other tortfeasors for contribution. That believe [sic] would be unfounded. Our contribution statue, as well as the Uniform Act, provides that a tortfeasor who settles in good faith with a claimant pursuant to paragraph (c)

One jurisdiction which has not adopted the Uniform Act adheres to a more rigid rule, requiring a tortfeasor to be specifically named in the release in order to be discharged.[56] In *Duncan v. Cessna Aircraft Co.*,[57] the Texas Supreme Court held that "the mere naming of a general class of tortfeasors in a release does not discharge the liability of each member of the class."[58] The release must refer to a tortfeasor "by name or with such descriptive particularity that his identity or his connection with the tortious event is not in doubt."[59] In conclusion the court in AID stated:

> [W]e believe that the legislature, in enacting section 668.7, intended to eliminate the ambiguity factor and require the identification of any tortfeasor that is to be released. We do not, at this time, state that all identification in the release must be made by the court as a matter of law without taking into account extrinsic evidence, however, such is not the case before us. *Because the defendant county was not released, plaintiff may not seek contribution under sections 668.5 and 668.6.* The trial court erred by overruling Defendant's motions. Therefore we reverse.[60]

Justice Carter dissented[61] on the factual issue and advocated adherence to the *Postville* rule: the true intention of the parties to a release is an issue of fact on which extrinsic evidence may be considered.[62] Applying the rule to the case at bar, Carter stated that the broad language in the release presented a "prima facie case that all joint tortfeasors were being released."[63]

In analyzing the court's approach, one might observe that, although AID was probably not entitled to contribution as a matter of fact, the Iowa Supreme Court rendered a law-oriented decision. By omitting the facts unfavorable to AID[64] from the opinion, the court set forth a generally applicable rule of law.

The general release involved in this case[65] was probably a remnant of the old common law. Prior to *Postville* such a release discharged the liability

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> of our statute is discharged from all liability for any contribution to any other tortfeasor.

Id. at 201, 461 N.E.2d at 364.

56. AID Ins. Co. v. Davis County, 426 N.W.2d at 634 (citing Duncan v. Cessna Aircraft Co., 665 S.W.2d 414 (Tex. 1984)).

57. Duncan v. Cessna Aircraft Co., 665 S.W.2d 414 (Tex. 1984).

58. *Id.* at 419-20.

59. *Id.* at 420.

60. AID Ins. Co. v. Davis County, 426 N.W.2d at 635 (emphasis added).

61. The case was considered by Presiding Justice Schultz, who wrote the majority opinion, and Justices Carter, Neuman, Snell, and Andreasen. *Id.* at 631. Justice Carter was the sole dissenter. *Id.* at 635.

62. *Id.* (Carter, J., dissenting).

63. *Id.* (Carter, J., dissenting).

64. *See supra* notes 6 & 62.

65. *See supra* note 4.

of all tortfeasors in accordance with the operation of common law.[66] After *Postville* the same release could also discharge the liability of all tortfeasors where it was the intent of the parties, as determined by the terms of the contract plus properly offered extrinsic evidence, to do so.[67] Now, however, it is clear that a general release containing such boilerplate language is not specific enough to discharge the liability of tortfeasors who are not parties to the release.[68]

One of the obvious questions raised by the *AID* decision is: what language in a release is sufficient to discharge other joint tortfeasors from liability, so that the tortfeasor executing the release may seek contribution against them? The court attempted to provide some guidelines by suggesting the use of classes, and warning that general designations are not sufficient.[69] An agreement would probably discharge the liability of joint tortfeasors who were not parties to the release if the agreement identified the theory of liability or negligence against those tortfeasors.[70] In reality, the circumstances under which a settling tortfeasor would seek to discharge the liability of other joint tortfeasors are probably limited.[71]

If AID had been aware of Davis County's probable liability before the release was executed, Davis County easily could have been named in the release. The injured passenger and her husband expressed no desire to sue the county,[72] and probably would have settled with AID even if Davis County was also included in the agreement. On the other hand, if Davis County was not a contemplated joint tortfeasor at the time the release was executed, allowing AID to seek contribution against the county when its liability was later discovered would give AID an advantage for which it did not bargain.

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66. *See supra* note 34 and accompanying text.

67. *See supra* notes 36-38 and accompanying text.

68. *See supra* notes 40-44 and accompanying text.

69. *See supra* notes 43-44 and accompanying text.

70. Where liability arises out of a car accident, it might be contemplated by the settling tortfeasor that there was something mechanically wrong with the car. In such a case the tortfeasor might designate "anyone liable for the condition of the car" in the release. A release might designate "anyone who served alcohol to X" where a drunk person (X) is the settling tortfeasor. Where a phantom vehicle causes an accident, the release might designate "the unidentified driver who was involved in the accident." In a case in which a defective product is involved, the release might designate "anyone who manufactured or designed any part of this product."

71. For example, where the tortfeasor or his insurer feels the injured party's claim is worth $20,000, but the injured party feels it is worth $25,000, the tortfeasor may agree to settle for $25,000 if he can recoup contribution from a joint tortfeasor. The injured party is content with the $25,000 settlement and agrees to release both tortfeasors. He does not have to bring a separate action against the joint tortfeasor who is not a party to the release in order to recover some payment for that tortfeasor's liability. The settling tortfeasor can then seek contribution from the nonparty tortfeasor *named* in the release. Both the injured party and the settling tortfeasor benefit from such an agreement.

72. *See supra* note 6.

This decision will probably encourage settlement negotiations, rather than discourage settlement as suggested by some courts.[73] The court's construction of section 668.7 appears to be preferable to common law for both a plaintiff and a defendant. Because the liability of all other tortfeasors is not extinguished by settlement with one tortfeasor, it is not necessary for a plaintiff to "hold out" until a satisfactory settlement of its claims against all tortfeasors can be agreed upon. A plaintiff need not be wary of settlement fearing that all tortfeasors might be inadvertently released. It is also unnecessary for the tortfeasors to agree among themselves upon their respective proportions of liability for the plaintiff's claim. By making settlement more attractive to both parties, Chapter 668 reduces litigation.

Because a settling tortfeasor normally intends to release only his own liability, any inclusion of subsequently discovered joint tortfeasors under broad language in the release, allowing contribution to be sought by the settling tortfeasor, is a windfall. As the court in AID stated, the settling tortfeasor is given an unintended advantage which is not in accord with the legislative intent underlying Chapter 668.

Tami J. Johnson

73. *See supra* note 30. In Douglas v. United States Tobacco Co., 749 F.2d 791, 794 (8th Cir. 1982), the court stated that *under the UCATA*, a "defendant who originally procures the release gains nothing if the plaintiff can sue other joint or concurrent tortfeasors. In such a case, the original defendant is left open to claims for contribution and/or indemnity and may wind up having to litigate the case anyway." Under Chapter 668, however, a tortfeasor may not enforce contribution against a joint tortfeasor who has already executed a release with the injured party. *See supra* note 20. Consequently, the policy reasons given by the court in *Douglas* are not valid under chapter 668. *See also supra* note 55.