Received: 11/20/2023 12:32 PM
Filed: 12/1/2023 2:35 PM

Exhibit A

IN THE
INDIANA COURT OF APPEALS

CAUSE NO. 23A-CT-01912

ERIN MURPHY,	)	Appeal from the
	)	Marion Superior Court
Appellant-Plaintiff	)	
	)	Cause No. 49D05-2203-CT-6608
v.	)	
	)	
INDIANA UNIVERSITY HEALTH NORTH	)	The Honorable John Chavis
HOSPITAL INC.	)	
a/k/a IU NORTH HOSPITAL	)	
EMERGENCY ROOM	)	
a/k/a IU HEALTH NORTH LABORATORY	)	
a/k/a IU HEALTH RADIOLOGY	)	
	)	
Appellee-Defendant	)	
	)	

BRIEF OF *AMICUS CURIAE*, DEFENSE TRIAL COUNSEL OF INDIANA, IN SUPPORT OF APPELLEES (PETITIONERS BELOW)

Lucy R. Dollens, Atty. No. 23547-49
QUARLES & BRADY, LLC
135 North Pennsylvania Street
Suite 2400
Indianapolis, IN 46204
Phone: 317-957-5000
Fax: 317-957-5010

Daniel R. Kelley, Atty. No. 30706-49
DINSMORE & SHOHL, LLP
211 North Pennsylvania Street
Suite 1800
Indianapolis, IN 46204
Phone: 317-860-5353
Fax: 317-639-6444

Donald Patrick Eckler, Atty. No. 25299-45
FREEMAN MATHIS & GARY, LLP
33 North Dearborn Street
Suite 1430
Chicago, IL 60602
Phone: 773-389-6446

Attorneys for *Amicus Curiae* Defense Trial Counsel of Indiana

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITES 4

STATEMENT OF INTEREST 5

SUMMARY OF ARGUMENT...5

ARGUMENT 6

CONCLUSION 12

WORD COUNT CERTIFICATE 14

CERTIFICATE OF FILING AND SERVICE 15

TABLE OF AUTHORITIES

Cases Page(s)

Indiana
Scott v. Retz, 916 N.E.2d 252 (Ind. Ct. App. 2009)……6
Comer-Marquardt v. A-1 Glassworks, LLC, 806 N.E.2d 883 (Ind. Ct. App. 2004)……6, 7
Fish v. Monroe County, 674 N.E.2d 594 (Ind. Ct. App. 1996)……6
Grzan v. Charter Hosp. of Northwest Indiana, 702 N.E.2d 786 (Ind. Ct. App. 1998)……6
Health & Hospital Corp. of Marion County v. Gaither, 392 N.E.2d 589 (1979)……7
Pelo v. Franklin Coll. of Indiana, 715 N.E.2d 365 (Ind. 1999)……7
Estes v. Hancock Cty. Bank, 289 N.E.2d 728 (Ind. 1972)……8

Illinois
American National Bank & Trust Co. v. Columbus-Cuneo-Cabrini Medical Center, 609 N.E.2d 285 (1992)……9
Bristow v. Griffitts Construction Co., 488 N.E.2d 332 (1986)……9
Gilbert v. Sycamore Mun. Hosp., 622 N.E.2d 788 (1993)……9
Golden v. Barenborg, 53 F.3d 866 (7th Cir. 1995)……9

Michigan
Theophelis v. Lansing General Hosp., 424 N.W.2d 478 (Mich. 1988)……10
DePolo v. Greig, 62 N.W.2d 441 (Mich. 1954)……10
Krolik v. Curry, 111 N.W. 761 (Mich. 1907)……10
Felsner v. McDonald Rent-A-Car, Inc, 484 N.W.2d 408 (Mich. App. 1992)……10

Mississippi
J&J Timber Co. v. Broome, 932 So. 2d 1 (Miss. 2006)……10

Iowa
Biddle v. Sartori Mem'l Hosp., 518 N.W.2d 795 (Iowa 1994)……11
Horejsi v. Anderson, 353 N.W.2d 316 (N.D. 1984)……11

Ohio
Radcliffe v. Mercy Hospital Anderson, No. C-960424, 1997 WL 249436 (Ohio Ct. App. 1997)........11

Kentucky
Copeland v. Humana of Kentucky., Inc., 769 S.W.2d 67 (Ky. Ct. App. 1989)........12
Waddle v. Galen of Kentucky, Inc., 131 S.W.3d 361 (Ky. App. 2004)........12

Kansas
Atkinson v. Wichita Clinic, P.A., 763 P.2d 1085 (Kan. 1988)........12

Connecticut
Alvarez v. New Haven Register, Inc., 735 A.2d 306 (1999)........12

Minnesota
Reedon of Faribault, Inc. v. Fidelity and Guar. Ins. Underwriters, Inc., 418 N.W.2d 488 (Minn.1988)........13

Massachusetts
Kelly v. Avon Tape, Inc., 631 N.E.2d 1013 (Mass. 1994)........12

Nebraska
Pioneer Animal Clinic v. Garry, 436 N.W.2d 184 (Neb. 1989)........13

North Dakota
Horejsi by Anton v. Anderson, 353 N.W.2d 316 (N.D. 1984)........13

Tennessee
Creech v. Addington, 281 S.W.3d 363 (Tenn. 2009)........13

STATEMENT OF INTEREST

The Defense Trial Counsel of Indiana ("DTCI") is an association of Indiana attorneys specializing in civil litigation defense. More specifically, DTCI defends foreign and domestic organizations that utilize separate business entities as their resident agent for service of process. The DTCI has an interest in the outcome of this appeal because the decision will impact many types of business cases, including medical malpractice cases like this one, that involve the doctrine of agency. Additionally, this appeal has the potential to bring about substantial and costly changes in the way claims are pursued and settlement practices are conducted in medical malpractice cases.

DTCI's proposed brief of *amicus curiae* explores the doctrine of agency in relation to medical malpractice claims stemming from *respondeat superior* and how various jurisdictions handle this subject. Furthermore, it emphasizes how Indiana law has placed significance on the principle that when an agent has no liability as a matter of law, the principal cannot have liability either.[1]

SUMMARY OF ARGUMENT

This Court should uphold the decision of the trial court's grant of summary judgment in IU Health North's favor because Indiana should continue to adhere to the longstanding principle that a judgment or determination on the merits that an agent does not have liability removes the basis for holding the principal liable.

---

[1] Pursuant to Indiana Appellate Rule 46(E)(2), the undersigned counsel for Amicus have consulted with counsel for IU Health North—whose position Amicus supports—to ascertain the arguments that will be raised and to avoid, where possible, any repetition and restatement of the same. That said, however, some duplication in the discussion of case law and issues could not be avoided.

Upholding the trial court's decision aligns Indiana with the prevailing legal consensus, ensuring consistency with established interpretations of agency law across numerous jurisdictions. Departing from this widely recognized understanding lacks justification, and it is in the best interest of legal coherence for Indiana to maintain conformity with this acknowledged legal doctrine.

ARGUMENT

A. Indiana law has established that a principal is not held liable when their agents is fully exonerated, aligning with similar principles in other states.

It is well-established in Indiana law that when an agent is held or determined not to have liability, the principal necessarily has no liability either. A principal cannot be held vicariously liable for the acts of a third party if the action could not be maintained against the third party, such as when the third party is released through judgment. *See, e.g.*, *Scott v. Retz*, 916 N.E.2d 252, 257 (Ind. Ct. App. 2009) ("[S]ummary judgment to the employee on the underlying tort claim necessarily requires judgment in favor of the employer as to respondeat superior."); *Comer-Marquardt v. A-1 Glassworks, LLC*, 806 N.E.2d 883, 888 (Ind. Ct. App. 2004) ("[A] judgment in favor of an agent requires a judgment in favor of the principal if the claim against the principal rests solely on alleged conduct by the agent."); *Fish v. Monroe County*, 674 N.E.2d 594, 599 (Ind. Ct. App. 1996) ("We decline to hold the County liable for the acts of its agents where the agents themselves are not liable for their own acts because to do so would be a dangerous precedent.")

This principle is supported by *Grzan v. Charter Hospital of Northwest Indiana*, which states that if a servant or agent is released from liability, no

liability can be attributed to the principal. 702 N.E.2d 786, 792 (Ind. Ct. App. 1998) ("Because we have concluded that the trial court properly entered summary judgment in favor of [the healthcare provider] on [plaintiff's] claims of malpractice and negligence, [the principal] cannot be held liable under the doctrine of respondeat superior."). Moreover, it is well-established that when an employee is found not liable, a judgment in favor of the employer follows, especially when the employer's liability is based solely on the employee's actions. "[A] judgment in favor of an employee requires judgment in favor of his employer when the employer's liability is predicated solely upon the acts of said employee." *Comer-Marquardt*, 806 N.E.2d at 887 (quoting *Health & Hospital Corp. of Marion County v. Gaither*, 392 N.E.2d 589, 595 (1979)).

There is no reason to depart from this well-settled and thoroughly logical principle of Indiana law. DTCI respectfully urges this Court to affirm the trial court's application of that principle.

B. This Court should limit *Pelo* and clarify that, in cases where a principal's liability is solely grounded in *respondeat superior*, the principal is released when the agent is fully exonerated.

To maintain adherence to these established legal principles and prevent Indiana from becoming an outlier, this Court should refrain from extending the scope of *Pelo v. Franklin Coll. of Indiana*, 715 N.E.2d 365 (Ind. 1999). In *Pelo*, the Court reiterated that a release agreement constitutes a contract, and held that where the release explicitly stated that it did not apply to a third party, it did not automatically exonerate that third party. *Pelo*, 715 N.E.2d at 367.

The *Pelo* Court dealt with a matter of contract interpretation; an issue unrelated to the broader issue of an exoneration of liability presented in the current case. The holding in *Pelo* is limited to releases, such as agreements settling claims, rather than to the broader context presented here where there is a finding of non-liability of an agent also relieving the principal. Further, the Court in *Pelo* emphasized that a reduction in liability is allowed when it aligns with the parties' intent expressed in a release agreement. *Id*. at 366-67 (holding that the intent of the parties to not release Franklin College was clear from the release that specifically stated that "this release does not release the employer … believed to be Franklin College….").

Thus, *Pelo* does not depart from the well-settled principles discussed above, that principals are not liable when their agents are affirmatively exonerated. *See Comer-Marquardt*, 806 N.E.2d at 887-88 ("[I]n this case the possibility exists that [the agent] will be found to have committed no wrongdoing, but [the principal] will still be held liable for [the agent's] wrongdoing that was found not to have occurred… this would be a completely illogical result and would run directly afoul of the axiom that a judgment in favor of an agent requires a judgment in favor of the principal if the claim against the principal rests *solely* on alleged conduct by the agent."); *Estes v. Hancock Cty. Bank*, 289 N.E.2d 728, 730 (Ind. 1972) (holding that "a proper verdict in favor of the [agent], whether announced by the jury or determined by the trial court, Rule TR. 50, requires a judgment in favor of the

[principal] where the liability of the [principal] is grounded *solely* upon the activities of the [agent].").

In the context of *respondeat superior* where the agent is not liable to the plaintiff, this Court should limit expanding the reach of the *Pelo* decision to ensure that Indiana aligns with the prevailing interpretations under agency law. The issue of vicarious liability for treating a physician's negligence, particularly when an agent has been released via settlement or judgment, has been examined in numerous jurisdictions.

The Illinois Supreme Court, in *American National Bank & Trust Co. v. Columbus-Cuneo-Cabrini Medical Center*, established a key principle: when a plaintiff pursues a *respondeat superior* claim against a principal, "any settlement between the agent and the plaintiff must also extinguish the principal's vicarious liability." 609 N.E.2d 285, 289 (1992); *See also Bristow v. Griffitts Construction Co.*, 488 N.E.2d 332, 338 (1986). This precedent was reaffirmed in *Gilbert v. Sycamore Mun. Hosp.*, wherein the court emphasized that when a plaintiff brings an action against a principle based on vicarious liability, a settlement with the agent nullifies the principal's vicarious liability, even if the plaintiff's agreement not to sue the agent explicitly reserves the right to seek recovery from the principal. 622 N.E.2d 788, 796-97 (1993).

Like *Gilbert*, the Seventh Circuit's ruling in *Golden v. Barenborg*, following a settlement, determined that a dismissal under Federal Rule of Civil Procedure 41(a)(1)(ii) constituted a final judgment on the merits. 53 F.3d 866, 871 (7th Cir.

1995). Consequently, this precluded the principal from being held liable based on vicarious liability. *Golden*, 53 F.3d at 871.

Michigan courts have also long held that where a suit against an agent is unsuccessful, the plaintiff cannot maintain a suit against the agent's principal. *See DePolo v. Greig*, 62 N.W.2d 441 (Mich. 1954), quoting *Krolik v. Curry*, 111 N.W. 761, 765 (Mich. 1907). In *Felsner v. McDonald Rent-A-Car, Inc*, the plaintiff, involved in a motorcycle accident with an employer's employee, initially sued the employee for negligence. 484 N.W.2d 408, 409 (Mich. App. 1992). Later, the plaintiff added the employer as a defendant under the theory of *respondeat superior*. *Felsner*, 484 N.W.2d at 409. After a satisfaction of judgment was executed in favor of the employee and other defendants, the employer moved for summary judgment, contending that the plaintiff's release of the employee absolved the employer of liability. *Id*. The Appellate Court concurred, establishing that a principal sued solely under *respondeat superior* is not a joint tortfeasor. *Id*. at 410. Additionally, releasing the agent relieves the principal of vicarious liability, as noted in *Theophelis v. Lansing General Hosp.*, "Any other result would be illogical and unjust because release of the agent removes the only basis for imputing liability to the principal." 424 N.W.2d 478, 491 (Mich. 1988).

In *J&J Timber Co. v. Broome*, the Mississippi Supreme Court made a significant ruling: "[T]he release of a tortfeasor operates to bar claims predicated on vicarious liability against the tortfeasor's employer." 932 So. 2d 1, 9 (Miss. 2006). In this case, wrongful death beneficiaries reached a settlement and indemnity

agreement, releasing the truck driver and indemnifying him against all claims arising from the accident. *J&J Timber Co.*, 932 So. 2d at 2. They then sued the truck driver's employer, claiming vicarious liability for the driver's negligence. *Id*. at 3. The Court explained that vicarious liability, being derivative, vanishes when the employee is released. *Id*. at 6.

Furthermore, in various states, it has been established that when an agent is released, and there is no independent negligence attributed to the principal, the claimant may not maintain an agent against the company. The Iowa Supreme Court clarified the principle that once the servant is released from liability, the master is necessarily released from vicarious liability:

> The "percentage of negligence" attributable to the conduct of the servant constitutes the entire "single share" of liability attributable jointly to the master and servant....Because this percentage of negligence represents the "single share" of liability covered by the common liability of the master and servant, the master is necessarily released from vicarious liability for the released servant's misconduct."

Biddle v. Sartori Mem'l Hosp., 518 N.W.2d 795, 798 (Iowa 1994) (citing *Horejsi v. Anderson*, 353 N.W.2d 316, 318 (N.D. 1984)). This legal principle is grounded in the concept that vicarious liability hinges on the legal connection between the principal and the wrongdoer. Therefore, reaching a settlement with the tortfeasor eliminates the basis for pursuing additional recovery from the principal for the same allegedly negligent actions.

In *Radcliffe v. Mercy Hospital Anderson*, the plaintiff brought a wrongful death claim against a doctor and hospital on the basis of negligence and vicarious liability. No. C-960424, 1997 WL 249436, *1, (Ohio Ct. App. 1997). The trial court

awarded summary judgment in favor of the doctor. *Radcliffe*, 1997 WL 249436 at *1. The hospital then argued that the dismissal of the doctor with prejudice on motion for summary judgment extinguished plaintiff's claim against the hospital for vicarious liability. *Id*. at *2. The appellate court held that "[t]he liability of [the doctor] was extinguished in the wake of the trial court's decision to grant summary judgment in his favor on the issue of his alleged negligence.... As noted above, there can be no vicarious liability imputed to a principal, if there is no liability on the part of the agent." *Id*. This rationale is consistently upheld, as demonstrated in *Copeland v. Humana of Kentucky., Inc.*, 769 S.W.2d 67, 70 (Ky. Ct. App. 1989).

Waddle v. Galen of Kentucky, Inc., provides a valuable precedent in understanding how releasing the primary tortfeasor affects derivative claims. 131 S.W.3d 361, 367 (Ky. App. 2004). This case underscores a principle consistent with many other states. The Kentucky Court of Appeals stressed that, because "the claim against the secondary tortfeasor was derived solely from the negligence of the primary tortfeasor," the release in favor of the primary tortfeasor bars the vicarious liability claims against the secondary tortfeasors as a matter of law. *Waddle*, 131 S.W.3d at 366.

Many states have adopted the position that releasing a wrongdoer also releases the wrongdoer's principal from all vicarious liability claims, even if a reservation of rights is made. *See, e.g.*, *Alvarez v. New Haven Register, Inc.*, 735 A.2d 306, 315 (1999); *Atkinson v. Wichita Clinic, P.A.*, 763 P.2d 1085, 1090 (Kan. 1988); *Kelly v. Avon Tape, Inc.*, 631 N.E.2d 1013, 1015 (Mass. 1994); *Theophelis*, 424

N.W.2d at 480; *Reedon of Faribault, Inc. v. Fidelity and Guar. Ins. Underwriters, Inc.*, 418 N.W.2d 488, 491 (Minn. 1988); *Pioneer Animal Clinic v. Garry*, 436 N.W.2d 184, 187 (Neb. 1989); *Horejsi by Anton v. Anderson*, 353 N.W.2d 316, 318 (N.D. 1984). Similarly, in *Creech v. Addington*, the Tennessee Supreme Court determined that an order of dismissal in favor of agents bars any adjudication of vicarious liability concerning the principals. 281 S.W.3d 363, 386-87 (Tenn. 2009). These rulings align with the understanding that releasing an agent removes the basis for holding the principal liable, ensuring a logical and fair legal outcome.

In consideration of decisions such as *Gilbert* and the precedents from jurisdictions cited above, this Court should not expand the application of *Pelo* beyond its peculiar facts.

CONCLUSION

The Defense Trial Counsel of Indiana respectfully requests that this Court uphold the decision of the trial court's grant of summary judgment in IU Health North's favor.

Signature page follows.

/s/ Donald Patrick Eckler – 25299-45
FREEMAN MATHIS & GARY, LLP
33 North Dearborn Street
Suite 1430
Chicago, IL 60602
Phone: 773-389-6446

Lucy R. Dollens, Atty. No. 23547-49
QUARLES & BRADY, LLC
135 North Pennsylvania Street
Suite 2400
Indianapolis, IN 46204
Phone: 317-957-5000
Fax: 317-957-5010

Daniel R. Kelley, Atty. No. 30706-49
DINSMORE & SHOHL, LLP
211 North Pennsylvania Street
Suite 1800
Indianapolis, IN 46204
Phone: 317-860-5353
Fax: 317-639-6444

Attorneys for Amicus Curiae,
Defense Trial Counsel of Indiana

CERTIFICATE OF COMPLIANCE WITH APPELLATE RULE 44(E)

I verify that this brief complies with the type volume limitation of Appellate Rule 44(E). This brief does not exceed 7,000 words. The brief contains 2974 words based upon the count of the word processing system to prepare the brief, Microsoft Word 2016.

Respectfully submitted,

/s/ Donald Patrick Eckler
Counsel for Amicus Defense Trial Counsel of Indiana