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Casenotes: Joint Tort-Feasors — Contribution — Release — Joint Tort-Feasor's Payment for Pro Rata Release in Excess of Its Pro Rata Share Operated to Satisfy Injured Party's Judgment Entered against Nonsettling Joint Tort-Feasor. Martinez v. Lopez, 300 Md. 91, 476 A.2d 197 (1984)

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JOINT TORT-FEASORS - CONTRIBUTION - RELEASE - JOINT TORT-FEASOR'S PAYMENT FOR PRO RATA RELEASE IN EXCESS OF ITS PRO RATA SHARE OPERATED TO SATISFY INJURED PARTY'S JUDGMENT ENTERED AGAINST NON-SETTLING JOINT TORT-FEASOR. *Martinez v. Lopez*, 300 Md. 91, 476 A.2d 197 (1984).

A child and her parents instituted a negligence action against both a hospital and a doctor seeking damages for alleged medical malpractice.[1] Prior to trial, the hospital settled with the plaintiffs for $725,000 and obtained a pro rata release[2] in compliance with section 20 of the Maryland Uniform Contribution Among Tort-Feasors Act (Maryland UCATA).[3] The trial proceeded against the doctor and the jury returned a verdict for the plaintiffs awarding plaintiffs $600,000.[4] The doctor then filed a motion for an order crediting the hospital's payment for its release toward the jury verdict against the doctor.[5] The trial court denied the doctor's motion and entered judgment against him in the amount of $300,000, representing the doctor's pro rata share of the total damages.[6] The Court of Special Appeals of Maryland affirmed the trial court's decision.[7] The court of appeals reversed, holding that section 19 of the

1. Martinez v. Lopez, 300 Md. 91, 94, 476 A.2d 197, 198 (1984). The plaintiffs claimed that the defendant's negligence during the child's birth caused her permanent, incapacitating brain damage. Martinez v. Lopez, 54 Md. App. 414, 416, 458 A.2d 1250, 1251 (1983), *rev'd*, 300 Md. 91, 476 A.2d 197 (1984).
2. The release provided that all of the plaintiffs' recoverable claims against the doctor were to be reduced to the extent of the statutory pro rata share of the hospital as determined under the Maryland Uniform Contribution Among Tort-Feasors Act (UCATA). Martinez v. Lopez, 300 Md. 91, 94, 476 A.2d 197, 198 (1984); *see infra* note 23 and accompanying text.
3. MD. ANN. CODE art. 50, § 20 (1979). Section 20 of the Maryland UCATA corresponds with, and is the same in all relevant parts as, section 5 of the 1939 UCATA as proposed by the Commission on Uniform Laws. *See* UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT § 5, 9 U.L.A. 245 (1957). For the full text of section 5, see *infra* note 21.

   The hospital satisfied both requirements of section 20. First, the release was obtained before judgment was entered against the doctor; therefore, a right of contribution had not accrued. Second, the release provided for a reduction of the judgment entered against the doctor to the extent of the hospital's pro rata share. *See* Martinez v. Lopez, 300 Md. 91, 94, 476 A.2d 197, 198 (1984).
4. Martinez v. Lopez, 300 Md. 91, 94, 476 A.2d 197, 198 (1984).
5. *Id.* at 95, 476 A.2d at 199. The doctor sought to have the $725,000 payment by the hospital credited to the $600,000 jury verdict, effectively satisfying in full the judgment entered against the doctor. *Id.*
6. *Id.* at 95, 476 A.2d at 199. The trial court determined that the doctor remained liable for his pro rata share of the total judgment. *Id.* The Court of Special Appeals of Maryland has determined that "pro rata share," for purposes of the Maryland UCATA, means "numerical shares or proportions based on the number of tortfeasors." Lahocki v. Contee Sand & Gravel Co., 41 Md. App. 579, 621, 398 A.2d 490, 514 (1979), *rev'd on other grounds sub nom.* General Motors Corp. v. Lahocki, 286 Md. 714, 410 A.2d 1039 (1980). Accordingly, in *Martinez*, the pro rata share was determined by dividing the amount of the verdict by two, resulting in a pro rata share of $300,000 for each joint tort-feasor. Martinez v. Lopez, 300 Md. 91, 95 n.2, 476 A.2d 197, 199 n.2 (1984).
7. Martinez v. Lopez, 54 Md. App. 414, 458 A.2d 1250 (1983), *rev'd*, 300 Md. 91, 476

Maryland UCATA[8] also applies to a pro rata release, and section 19 requires that the $725,000 paid for the release be credited to the $600,000 judgment, thus fully extinguishing the judgment entered against the doctor.[9]

This casenote analyzes *Martinez v. Lopez* and its implications in light of section 17(c) of the Maryland UCATA: Whether a settling joint tort-feasor whose release has effectively, but not expressly, extinguished a nonsettling joint tort-feasor's liability can bring an action for contribution against the nonsettling tort-feasor.

At common law, if an injured party released one of several joint tort-feasors[10] from liability, then the remaining tort-feasors also were released.[11] This doctrine was based on the theory that an injured party could receive but one satisfaction for the same injury; therefore, receipt of consideration for a release of one of the persons liable was deemed full satisfaction and released all others liable for the same injury.[12] Legal scholars criticized this rule because, as a result, uninformed plaintiffs who settled gave up rights of action they did not intend to relinquish.[13]

The primary purpose of the 1939 Uniform Contribution Among

A.2d 197 (1984). The court of special appeals held that section 19 of the Maryland UCATA, which operates to reduce the judgment against the nonsettling tort-feasor by the amount of consideration paid for the release by the settling tort-feasor, or the settling tort-feasor's pro rata share, whichever is greater, did not apply to a pro rata release that conformed to section 20. *Id.* at 418-20, 458 A.2d at 1253-54. The court found sections 19 and 20 to be mutually exclusive and applied only section 20 because this release was a pro rata release. *Id.* at 420-21, 427, 458 A.2d at 1253-54, 1257. Applying section 20 exclusively, the court concluded that the doctor would still be liable for his pro rata share of the verdict. *See id.* at 427, 458 A.2d at 1257.

8. MD. ANN. CODE art. 50, § 19 (1979). Section 19 of the Maryland UCATA corresponds with, and is the same in all relevant parts as, section 4 of the 1939 UCATA as proposed by the Commission on Uniform Laws. See UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT § 4, 9 U.L.A. 242 (1957). For the full text of section 4, see *infra* note 19.
9. Martinez v. Lopez, 300 Md. 91, 96, 476 A.2d 197, 199-200 (1984).
10. The term "joint tort-feasor" is defined as "two or more persons jointly or severally liable in tort for the same injury to person or property." BLACK'S LAW DICTIONARY 752-53 (5th ed. 1979).
11. *E.g.*, Swigert v. Welk, 213 Md. 613, 619, 133 A.2d 428, 431 (1957); Gunther v. Lee, 45 Md. 60, 67 (1876); W. PROSSER & W. KEETON, PROSSER AND KEETON ON THE LAW OF TORTS § 49 (W. Keeton ed. 1984).
12. *See* Gunther v. Lee, 45 Md. 60, 67 (1876); Daugherty v. Hershberger, 386 Pa. 367, 374, 126 A.2d 730, 733-34 (1956). *See generally* W. PROSSER & W. KEETON, PROSSER AND KEETON ON THE LAW OF TORTS § 49 (W. Keeton ed. 1984) (discussing the effect of a satisfaction of judgment on the plaintiff's claim).
13. *See, e.g.*, W. PROSSER & W. KEETON, PROSSER AND KEETON ON THE LAW OF TORTS § 49 (W. Keeton ed. 1984) ("the rule seems at best an antiquated survival of an arbitrary common law procedural concept . . . it has no reasonable application at all to cases of mere concurrent negligence"); Prosser, *Joint Torts and Several Liability*, 25 CALIF. L. REV. 413, 424-25 (1936-37) (characterizing the rule as unreasonable); Wigmore, *Release To One Joint Tortfeasor*, 17 ILL. L. REV. 563 (1923) (referring to the rule as "an obnoxious old friend"); *see also* Theobald v. Angelos, 44 N.J. 228, 239, 208 A.2d 129, 134 (1965) (stating that this rule is "nothing but a trap for the unwary").

Tortfeasors Act (UCATA)[14] was to "create a right of contribution among joint tortfeasors, which did not exist at common law."[15] The UCATA thus abrogates the common law rule that a release of one joint tort-feasor released all those liable for the same injury,[16] and it establishes a right of contribution among joint tort-feasors.[17]

The UCATA sets forth guidelines that govern the rights between an injured party and the joint tort-feasors, as well as the rights among joint tort-feasors when one of the joint tort-feasors has obtained a release from the injured party. The rule that an injured party is entitled to only one satisfaction for an injury, however, remains in force even after the adoption of the UCATA.[18] Section 4 of the UCATA[19] addresses the effect on

14. UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT, 9 U.L.A. 233 (1957). The 1939 UCATA has been rewritten and superceded by the 1955 UCATA. *See* UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT, 12 U.L.A. 57 (1975). Maryland and several other states, however, still retain the 1939 version in some form. *See infra* note 35 and accompanying text. The Commission on Uniform Laws rewrote the UCATA because many of the states adopting the 1939 version had made significant changes in response to problems that arose in its application. The Commission sought to respond to these problems and develop an act that could be applied uniformly throughout the states. *See* UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT commissioner's prefatory note, 12 U.L.A. 59 (1975).
15. Baltimore Transit Co. v. State *ex rel.* Schriefer, 183 Md. 674, 679, 39 A.2d 858, 860 (1944) (citing Baltimore & O.R.R. Co. v. Howard County Comm'rs, 113 Md. 414, 77 A. 930 (1910)); UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT § 1, 9 U.L.A. 234 n.1 (1957).
16. UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT § 4, 9 U.L.A. 242 (1957). Section 4 of the UCATA states that "[a] release by the injured person of one joint tortfeasor . . . does not discharge the other tortfeasors unless the release so provides. . . ." *Id.*; *see, e.g.*, Raughley v. Delaware Coach Co., 47 Del. 343, 347, 91 A.2d 245, 247 (1952); Swigert v. Welk, 213 Md. 613, 617, 133 A.2d 428, 431 (1957); Loh v. Safeway Stores, Inc., 47 Md. App. 110, 118, 422 A.2d 16, 21 (1980); Daugherty v. Hershberger, 386 Pa. 367, 373, 126 A.2d 730, 733-34 (1956).
17. UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT § 2, 9 U.L.A. 235 (1957). Section 2 provides that "[t]he right of contribution exists among joint tortfeasors." *Id.*
18. *See* Maryland Lumber Co. v. White, 205 Md. 180, 199-200, 107 A.2d 73, 80 (1954); Augustine v. Langlais, 402 A.2d 1187, 1189 (R.I. 1979); Duncan v. Pennington County Hous. Auth., 283 N.W.2d 546, 551 (S.D. 1979) (quoting Layne v. United States, 460 F.2d 409, 411 (9th Cir. 1972)). *But see* Theobald v. Angelos, 44 N.J. 228, 239, 208 A.2d 129, 134-35 (1965) (stating that the law does not frown upon a greater satisfaction if there is no threat to public policy or unfair advantage taken of another). It should be noted that New Jersey rejected sections 4 and 5 of the 1939 UCATA. *See* Judson v. Peoples Bank & Trust Co., 25 N.J. 17, 34-35, 134 A.2d 761, 770 (1957). *See generally* N.J. STAT. ANN. 2A §§53A-1 to 5 (1952) (New Jersey's joint tort-feasors contribution law).
19. UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT § 4, 9 U.L.A. 242 (1957). Section 4 provides:

> § 4. Release; Effect on Injured Person's Claim. - A release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides; but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid.

the injured person's claim when one joint tort-feasor settles and obtains a release from the injured party. Section 4 proscribes double recovery by providing that a release must reduce the claim against the nonsettling tort-feasors either by the amount of the consideration paid for the release, or an amount by which the release provides to reduce the total claim, whichever is greater.[20] In addition, section 5 of the UCATA[21] considers the effect of one joint tort-feasor's release on the right of a nonreleased joint tort-feasor to obtain contribution from the released tort-feasor. Hence, section 5 protects a released joint tort-feasor from contribution to a nonreleased joint tort-feasor, provided the released joint tort-feasor complies with certain requirements.[22] One such requirement is that the released joint tort-feasor must obtain a pro rata release. A pro rata release is a release given by the injured party to a joint tort-feasor and provides that the injured party will reduce any judgment obtained against any other joint tort-feasor by the statutory pro rata share of the released tort-feasor.[23]

All of the states that have adopted statutes corresponding to sections 4 and 5 of the UCATA, and that have considered the effect of a pro rata release on the injured party's claim against the nonsettling joint tort-feasor, have applied their statutory equivalent of section 4.[24] In so doing, they have reduced the judgment against the nonsettling joint tort-feasor by the amount of consideration paid for the release, or by the amount provided in the release, whichever was greater.[25] In each case, when the

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Id.

20. *See id*; Augustine v. Langlais, 402 A.2d 1187, 1189 (R.I. 1979).
21. UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT § 5, 9 U.L.A. 245 (1957). Section 5 provides:

    > § 5. Release; Effect on Right of Contribution. - A release by the injured person of one joint tortfeasor does not relieve him from liability to make contribution to another joint tortfeasor unless the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person's damages recoverable against all the other tortfeasors.

    Id.
22. *See* Raughley v. Delaware Coach Co., 47 Del. 343, 349, 91 A.2d 245, 247-48 (1952). In order to comply with section 5, the release must be given before a right of the nonsettling tort-feasor to obtain contribution has accrued, and the release must provide for a reduction of the injured person's claim against the nonsettling tort-feasor, to the extent of the released tort-feasor's pro rata share of the claim. For the text of section 5, see *supra* note 21.
23. *See* Martinez v. Lopez, 300 Md. 91, 96, 476 A.2d 197, 199 (1984).
24. Weinstein v. Stryker, 267 F. Supp. 34, 37 (E.D. Pa. 1967) (applying Pennsylvania law); Woodard v. Holliday, 235 Ark. 744, 750, 361 S.W.2d 744, 748-49 (1962); Raughley v. Delaware Coach Co., 47 Del. 343, 349, 91 A.2d 245, 248 (1952); Garrison v. Navajo Freight Lines, Inc., 74 N.M. 238, 242, 392 P.2d 580, 583 (1964); Daugherty v. Hershberger, 386 Pa. 367, 372-73, 126 A.2d 730, 734 (1956); Augustine v. Langlais, 402 A.2d 1187, 1189 (R.I. 1979); Duncan v. Pennington County, 283 N.W.2d 546, 552 (S.D. 1979); Degen v. Bayman, 241 N.W.2d 703, 707 (S.D. 1976).
25. *See, e.g.*, Raughley v. Delaware Coach Co., 47 Del. 343, 349, 91 A.2d 245, 248

consideration paid for the release was greater than the jury's verdict against the nonsettling tort-feasor, the judgment was deemed satisfied in full.[26]

In *Raughley v. Delaware Coach Co.*,[27] the Delaware Superior Court considered an issue similar to the issue in *Martinez v. Lopez*.[28] There were two joint tort-feasors in *Raughley*, one of whom settled and obtained a pro rata release.[29] Interpreting Delaware's statutory equivalent of section 4 of the UCATA, the Delaware court held that if the jury determines the plaintiff's damages to be an amount less than that of the consideration paid for the release, then the nonsettling tort-feasor can plead the release as a complete defense, and no judgment can be entered against him.[30] Similarly, the United States District Court for the Eastern District of Pennsylvania, in *Weinstein v. Stryker*,[31] held that the plaintiff's judgment against a nonsettling joint tort-feasor was satisfied because the plaintiff already had received $5,000 from one joint tort-feasor in consideration for that tort-feasor's pro rata release, and the jury had determined the plaintiff's total damages to be only $1,650.[32]

Correspondingly, when the consideration paid for a pro rata release is more than the released joint tort-feasor's pro rata share, but less than the jury's award, the claim against the nonreleased tort-feasor is reduced by the amount of consideration paid for the release.[33] Hence, no jurisdic-

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(1952) (holding that the $20,000 paid for the release would extinguish a judgment against the remaining tort-feasor if the jury's verdict does not exceed $20,000); Daugherty v. Hershberger, 386 Pa. 367, 372-73, 126 A.2d 730, 734 (1956) (reducing judgments against remaining joint tort-feasors by the pro rata share, and reducing other judgments against same joint tort-feasors by the consideration paid for the release, depending on which was greater); Augustine v. Langlais, 402 A.2d 1187, 1189 (R.I. 1979) (reducing award against remaining joint tort-feasor by $42,000, which was the consideration paid for release of one joint tort-feasor).

26. *See* Weinstein v. Stryker, 267 F. Supp. 34, 37 (E.D. Pa. 1967) (applying Pennsylvania law); Daugherty v. Hershberger, 386 Pa. 367, 372-73, 126 A.2d 730, 733-34 (1956); Duncan v. Pennington County, 283 N.W.2d 546, 552 (S.D. 1979); *see also* Raughley v. Delaware Coach Co., 47 Del. 343, 350, 91 A.2d 245, 248 (1952) (stating that if the jury's verdict does not exceed the consideration paid for the release, the release could constitute a complete defense).
27. 47 Del. 343, 91 A.2d 245 (1952).
28. 300 Md. 91, 476 A.2d 197 (1984).
29. *Raughley*, 47 Del. at 345, 91 A.2d at 246.
30. *Id.* at 350, 91 A.2d at 248 (1952). In *Raughley*, a passenger sued a railroad company and a bus company for injuries received from a collision between a bus and a train. The bus company paid the plaintiff $20,000 and obtained a pro rata release. The matter was before the court on the plaintiff's pre-trial motions. The court stated that if the jury found the plaintiff was not entitled to more than $20,000, the railroad company could plead the release as a complete defense. *Id.*
31. 267 F. Supp. 34 (E.D. Pa. 1967) (applying Pennsylvania law).
32. *Id.* at 37. *Weinstein* involved a suit by a motorist against two joint tort-feasors. One joint tort-feasor executed a pro rata release, paying the plaintiff $5,000. At trial, the jury rendered a verdict of $1,650 against the nonsettling joint tort-feasor. The United States District Court, applying Pennsylvania law, held that Pennsylvania's equivalent to section 4 of the 1939 UCATA warranted that the nonsettling joint tort-feasor was entitled to have the judgment marked satisfied. *Id.*
33. *See* Daugherty v. Hershberger, 386 Pa. 367, 375, 126 A.2d 730, 734 (1956); Augus-

tion adopting sections similar to sections 4 and 5 of the UCATA has held them to be mutually exclusive; rather, they have found their statutory equivalent of section 4 also applicable to a pro rata release.[34]

In 1941, the Maryland legislature adopted the 1939 version of the UCATA.[35] Sections 19 and 20 of the Maryland UCATA read:

> § 19. Effect of release on injured person's claim.
>
> A release by the injured person of one joint tort-feasor, whether before or after judgment, does not discharge the other tort-feasors unless the release so provides; but reduces the claim against the other tort-feasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid.[36]
>
> § 20. Effect of release on right of contribution.
>
> A release by the injured person of one joint tort-feasor does not relieve him from liability to make contribution to an-

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tine v. Langlais, 402 A.2d 1187, 1189 (R.I. 1979); *cf.* Garrison v. Navajo Freight Lines, Inc., 74 N.M. 238, 242, 392 P.2d 580, 583 (1964) (jury deducted the consideration paid for the release before delivering the verdict against the nonreleased tort-feasor).

34. *See, e.g.*, Raughley v. Delaware Coach Co., 47 Del. 343, 345, 91 A.2d 245, 247 (1952) (applying Delaware's section 4 of their UCATA to a pro rata release to reduce the amount of damages recoverable from the remaining defendant); Daughtery v. Hershberger, 386 Pa. 367, 371, 126 A.2d 730, 732 (1956) (applying section 4 of the UCATA to a pro rata release to reduce the judgments against the remaining defendant); Augustine v. Langlais, 402 A.2d 1187, 1188 n.1, 1189 (R.I. 1979) (applying Rhode Island's section 10-6-7, a verbatim enactment of section 4 of the UCATA, to a pro rata release); *see also supra* notes 24 and 25 and accompanying text (discussing the application of section 4).

35. Act of June 1, 1941, ch. 344, §§ 21-29, 1941 Md. Laws 548 (codified in MD. ANN. CODE art. 50, §§ 16-24 (1979)). The only section of the 1939 UCATA not adopted in Marylnd was § 2(4) which provides, "when there is such a disproportion of fault among joint tortfeasors as to render inequitable an equal distribution among them of the common liability by contribution, the relative degrees of fault of the joint tortfeasors shall be considered in determining their pro rata shares." UNIFORM CONTRIBUTION AMONG TORTFEASOR'S ACT § 2(4), 9 U.L.A. 235 (1957). This section was optional because it was intended for use in those jurisdictions adopting comparative fault. *Id.* at 236. Maryland has not adopted comparative fault. *See* Harrison v. Montgomery County Bd. of Educ., 295 Md. 442, 456 A.2d 894 (1983) (explaining why comparative fault is not adopted in Maryland).

To date, ten other states have adopted all or part of the 1939 UCATA in some form. ARK. STAT. ANN. §§ 34-1001 to 1009 (1962); DEL. CODE ANN. tit. 10, §§ 6301-08 (1974); HAWAII REV. STAT. §§ 663-11 to 17 (1976); IDAHO CODE §§ 6-803 to 806 (1979); MISS. CODE ANN. § 85-5-5 (1972); N.J. STAT. ANN. §§ 2A:53A-1 to 5 (West Cum. Supp. 1979); N.M. STAT. ANN. §§ 41-3-1 to 8 (1978); 42 PA. CONS. STAT. ANN. §§ 8321-27 (Purdon Cum. Supp. 1979); R.I. GEN. LAWS §§ 10-6-1 to 11 (1969); S.D. COMP. LAWS. ANN. §§ 15-8-11 to 22 (1967); *see also* Comment, *The Covenant Not To Sue: Virginia's Effort to Bury the Common Law Rule Regarding the Release of Joint Tortfeasors*, 14 U. RICH. L. REV. 809, 814 n.24 (1980) (discussing the various states adopting the 1939 UCATA).

36. MD. ANN. CODE art. 50, § 19 (1979).

other joint tort-feasor unless the release is given before the right of the other tort-feasor to secure a money judgment for contribution has accrued, and provides for a reduction, to the extent of the pro rata share of the released tort-feasor, of the injured person's damages recoverable against all other tort-feasors.[37]

The Court of Appeals of Maryland first considered the application of sections 19 and 20 of the Maryland UCATA (comparable to sections 4 and 5 of the 1939 UCATA) in *Swigert v. Welk*.[38] The Maryland court, posing a hypothetical situation, indicated that if a plaintiff received consideration from one joint tort-feasor for a pro rata release, then the amount of consideration, if greater than the released tort-feasor's pro rata share, would reduce the judgment entered against the remaining tort-feasor by the amount that the consideration paid exceeded the pro rata share.[39]

Until *Martinez v. Lopez*,[40] with the exception of *Swigert*,[41] the Maryland courts had not fully considered either the application of section 19 to a pro rata release, nor the effect of section 19 on a pro rata release, if the consideration paid for the release exceeded the plaintiff's damages as ultimately determined in a trial against the nonreleased joint tort-feasor.[42] These issues, however, were discussed in an article written by

37. MD. ANN. CODE art. 50, § 20 (1979).

38. 213 Md. 613, 133 A.2d 428 (1957). In *Swigert*, the court refers to sections 23 and 24 of the Maryland UCATA. These sections became section 19 and 20, respectively, in the 1957 version of the Maryland Code. The issue in *Swigert* concerned the application of the Maryland UCATA when the released tort-feasor denied liability in his release. This was not an issue in Martinez v. Lopez, 300 Md. 91, 476 A.2d 197 (1984), because there the release stated that the hospital should be considered a joint tort-feasor for purposes of the Maryland UCATA. *Martinez*, 300 Md. at 94, 476 A.2d at 198.

39. *Swigert*, 213 Md. at 619, 133 A.2d at 431 (1957). Considering the effect of a release of one joint tort-feasor as consideration for $3,500, the *Swigert* court surmised that "if the plaintiff's damages be assessed at $4,000 and if the provision of section 23 [present section 19] requiring a reduction in the amount of consideration paid for the release be applied, the judgment to be entered against Swigert will be $500." *Id.*

40. 300 Md. 91, 476 A.2d 197 (1984).

41. 213 Md. 613, 133 A.2d 428 (1957).

42. The Court of Special Appeals of Maryland, however, briefly considered the application of section 19 in Chilcote v. Von Der Ahe Van Lines, 55 Md. App. 291, 462 A.2d 536 (1983), *aff'd*, 300 Md. 106, 476 A.2d 204 (1984), and Jones v. Hurst, 55 Md. App. 607, 459 A.2d 219 (1983). The cases are of little precedential value on this issue as both relied summarily on the court of special appeals' opinion in Martinez v. Lopez, 55 Md. App. 414, 458 A.2d 1250 (1983), *rev'd*, 300 Md. 91, 476 A.2d 197 (1984), which declared that section 19 was applicable only to a nonpro rata release. *Chilcote* and *Jones* are clearly distinguishable from *Martinez*. In *Chilcote*, the main issue was the definition of "pro rata share," not the application of section 19 to a pro rata release. The consideration paid for the release was less than the pro rata share. Thus, the court did not have to consider whether section 19 conflicts with section 20; the court simply applied section 20 and reduced the judgment by the released tort-feasor's pro rata share. *Chilcote*, 55 Md. App. at 295-98, 462 A.2d at 539-40. In *Jones*, the issue was not the relationship between sections 19 and 20, but was whether the defendants were in fact joint tort-feasors merely because the

Wendell D. Allen, Esq.,[43] who previously had written a paper[44] which substantially influenced the construction of the Maryland UCATA by Maryland courts.[45] Mr. Allen argued that if the consideration paid for a pro rata release exceeds the jury verdict against the nonreleased joint tort-feasor, the plaintiff should receive nothing from the nonreleased tort-feasor.[46]

In *Martinez v. Lopez*, the court held that section 19 of the Maryland UCATA applies to both pro rata and nonpro rata releases.[47] Consequently, the court applied section 19 and concluded that the $725,000 paid by the hospital for its pro rata release would reduce the jury verdict of $600,000 to a negative number. Thus, no judgment could be entered against the doctor.[48]

The court based its decision on its interpretation of the plain statutory language of sections 19 and 20. The court found nothing in these two sections to suggest they are mutually exclusive; rather, the court determined that the section headings indicated only that the sections apply to different aspects of release situations.[49] The court reasoned that the term "proportion by which the release provides" in section 19 can refer to the same amount as the term "pro rata share" in section 20 if the release involved is a pro rata release, because in that situation the "proportion by which the release provides" is the pro rata share.[50] According to the court, the reason for different terms is that section 19 must be more encompassing because it also applies to nonpro rata releases.[51]

The court further analyzed section 19 and found that a release that "reduces the claim" in the second part of section 19 must be the same generic release referred to in the first part of the section, and not merely a specific nonpro rata release.[52] The court concluded that the legislature would not shift from the generic to the specific without stating in the statute that the meaning in the "but" clause of section 19 is restricted to only nonpro rata releases.[53]

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release stated so. It is noteworthy, however, that the court of special appeals affirmed the trial court's application of section 19 to the pro rata release in reducing the verdict. *Jones*, 55 Md. App. at 610, 459 A.2d at 222 (1983).

43. Allen, *Contribution Among Tortfeasors*, The Daily Rec., Jan. 11, 1971, at 6, cols. 1-3 (Baltimore).
44. Allen, *Joint Tortfearors; Contribution; Indemnity; Procedure*, The Daily Rec., Mar. 30, 1948, at 305 (Baltimore) (The Daily Record published this paper in full).
45. Martinez v. Lopez, 300 Md. 91, 99, 476 A.2d 197, 201 (1984).
46. Allen, *Contribution Among Tortfeasors*, The Daily Rec., Jan. 11, 1971, at 6, cols. 1-3 (Baltimore).
47. *Martinez*, 300 Md. at 98, 476 A.2d at 200.
48. *Id.* at 96, 476 A.2d 199-200.
49. *Id.* at 102, 476 A.2d at 202-03. Moreover, the court found section 19 dispositive on the effect that the release had on the plaintiffs' claim against the doctor. *Id.* at 96, 476 A.2d at 199.
50. *Id.* at 101-02, 476 A.2d at 202.
51. *Id.* at 102, 476 A.2d at 202.
52. *Id.*
53. *Id.*

The court correctly supported its analysis with its previous decision in *Swigert v. Welk*,[54] supplemented by decisions from other jurisdictions that have similarly interpreted statutes equivalent to sections 19 and 20 of the Maryland UCATA.[55]

By holding section 19 of the Maryland UCATA applicable to a pro rata release, and construing sections 19 and 20 together, the decision by the *Martinez* court conforms not only to decisions of other jurisdictions considering this issue,[56] but also to prior reasoning of the Court of Appeals of Maryland.[57]

Basic principles of statutory construction also support the *Martinez* court's holding.[58] The titles and language of sections 19 and 20 indicate those sections apply to different situations involving a release and not to different types of releases.[59] Neither section specifies that section 19 is applicable only to a nonpro rata release, and both refer to "a release," indicating all releases. Where two statutes address the same subject matter, they must be construed together if they are not inconsistent with one another; to the extent possible, full effect should be given to each.[60] As stated by the court, the phrase "any amount or proportion by which the release provides" in section 19 is meant to encompass the term "pro rata share" in section 20. In some cases, as in *Martinez*, the terms have the same meaning. This situation occurs where the release provides for a reduction of the claim to the extent of the released party's pro rata share, because in this situation the "amount or proportion by which the release provides" is the pro rata share.[61] Conversely, the "amount or proportion

54. *Id.* at 96-97, 476 A.2d at 200 (citing Swigert v. Welk, 213 Md. 613, 133 A.2d 428 (1957) (dictum)); *see supra* notes 38-39 and accompanying text.

55. 300 Md. at 98, 476 A.2d at 200-01. The court concluded that in other jurisdictions adopting statutes equivalent to Maryland's UCATA, courts have applied their statutory equivalent of section 19 to pro rata releases. *Id*; *see supra* notes 23-34 and accompanying text.

56. *See supra* notes 27-34 and accompanying text.

57. *See* Swigert v. Welk, 213 Md. 613, 618, 133 A.2d 428, 431 (1957) (stating that a pro rata release fully complies with former section 24 (present section 20) and is also within the provisions of former section 23 (present section 19)); *see also* Lahocki v. Contee Sand & Gravel Co., 41 Md. App. 579, 619, 398 A.2d 490, 513 (1979) (stating that the language of section 19 refers to the same release as the language in § 20), *rev'd on other grounds sub nom.* General Motors Corp. v. Lahocki, 286 Md. 714, 410 A.2d 1039 (1980).

58. If there is no ambiguity in the statute, the court considers the language of the statute in its natural and ordinary signification and there is no need to look elsewhere to ascertain the intent of the legislature. *See* Police Comm'r v. Dowling, 281 Md. 412, 418, 379 A.2d 1007, 1010-11 (1977).

59. The title to section 19 reads, "Effect Of Release On Injured Person's Claim." MD. ANN. CODE art. 50, § 19 (1979). The title to section 20 reads, "Effect Of Release On Right Of Contribution." MD. ANN. CODE art. 50, § 20 (1979). *See* Smelser v. Criterion Ins. Co., 293 Md. 384, 386-87 n.2, 390, 444 A.2d 1024, 1026 n.2, 1028 (1982) (discussing the effect of a statute's title on the statute's interpretation).

60. *See* Police Comm'r v. Dowling, 281 Md. 412, 418, 379 A.2d 1007, 1011 (1977).

61. *See Martinez*, 300 Md. at 94, 476 A.2d at 198. The release provided that any claims of the plaintiff are to be reduced to the extent of the "statutory pro rata share." *Id.*; *see also* Raughley v. Delaware Coach Co., 47 Del. 343, 91 A.2d 245 (1952) (apply-

by which the release provides" can also refer to an amount other than the pro rata share if the parties so agree, in which case the release would be a nonpro rata release.[62] The existence of this broad terminology in section 19 buttresses the conclusion that section 19 applies to both pro rata and nonpro rata releases because it demonstrates the literal applicability of section 19 to both releases. The applicability of section 19 to both releases also refutes the claim that sections 19 and 20 are mutually exclusive because it demonstrates that the release referred to in section 20 providing for a pro rata share reduction can be the same release referred to in section 19. Further evidence that sections 19 and 20 should be construed together is found in the Commission on Uniform Laws' rewrite of the 1939 UCATA.[63] The Commission combined sections 4 and 5, from which Maryland sections 19 and 20 were adopted verbatim, into one section, indicating the two sections are not meant to be mutually exclusive.[64]

Furthermore, applying section 19 to a pro rata release is consistent with the common law rule preserved by the UCATA, that an injured party is still permitted only one satisfaction for an injury.[65] Under the facts of *Martinez*, if section 19 were applicable only to a nonpro rata release, the plaintiffs would have received nearly double the $600,000 in damages awarded by the jury. The plaintiffs had received $725,000 from the hospital in consideration for the release, and the doctor would have remained liable to the plaintiffs for $300,000, his pro rata share of the jury verdict, making the plaintiffs' total recovery $1,025,000.[66]

Although the *Martinez* holding is consistent with the rule that a plaintiff should receive only one satisfaction for an injury, the practical effect of holding that section 19 applies to a pro rata release is to enable a nonreleased tort-feasor, the doctor here, to receive a windfall because the

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ing Delaware's statutory equivalent of Maryland's section 19 to a pro rata release); Daugherty v. Hershberger, 386 Pa. 367, 126 A.2d 730 (1956) (applying Pennsylvania's statutory equivalent of Maryland's section 19 to a pro rata release).

62. *See* UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT § 4, 9 U.L.A. 242 (1957). For the full text of section 4, see *supra* note 19.

63. *See supra* note 14 and accompanying text.

64. *See* UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT § 4, 12 U.L.A. 98 (1975). The substance of former section 4 (Maryland section 19) remained unchanged; the only change was the addition of section 5 (Maryland section 20), particularly the portion of section 5 pertaining to its effect on the right of contribution, which indicates that former sections 4 and 5 were to be construed together and could apply to the same release. The new section did away with the requirement that the release had to provide for a reduction of the claim against the nonsettling tort-feasor to the extent of the settling tort-feasor's pro rata share in order to protect the settling tort-feasor from contribution to the nonsettling tort-feasor. The 1955 version requires only that the release be made in good faith in order to protect the settling joint tort-feasor from contribution. *See* UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT § 4 commissioner's comment, 12 U.L.A. 99 (1975).

65. *See* Layne v. United States, 460 F.2d 409, 411 (9th Cir. 1972) (applying Alaska law).

66. *See* Martinez v. Lopez, 54 Md. App. 414, 458 A.2d 1250 (1983), *rev'd*, 300 Md. 91, 476 A.2d 197 (1984).

pro rata release would extinguish the nonreleased tort-feasor's liability. To avoid this windfall, a released joint tort-feasor whose release has effectively eliminated the liability of the nonreleased joint tort-feasor, the hospital here, should be permitted to bring an action for contribution against the nonreleased joint tort-feasor, the doctor here, for the pro rata share. Section 17(c) of the Maryland UCATA, however, appears to prohibit such an action.[67] Section 17(c) prohibits an action for contribution by a settling joint tort-feasor against a nonsettling joint tort-feasor unless the settlement extinguishes the nonsettling tort-feasor's liability.[68] This language appears to indicate that a settling joint tort-feasor would be estopped from recovering anything from a nonsettling joint tort-feasor unless the settling tort-feasor's release *expressly* released the nonsettling tort-feasor from liability to the injured party. A basic purpose of the UCATA, however, is to create a right of contribution among joint tort-feasors and establish a procedure to effectuate that right.[69] To effectuate this purpose, the UCATA permits the equitable enforcement of contribution by a tort-feasor who has paid more than his share of the common liability regardless of whether that tort-feasor entered into a release.[70]

Considering a situation similar to that presented in *Martinez*, the Superior Court of Pennsylvania in *Mong v. Hershberger*,[71] held that the verb "extinguish" in Pennsylvania's statutory equivalent to Maryland's section 17(c) did not mean the release had to state specifically that it extinguished the nonsettling joint tort-feasor's liability to the injured party if the practical effect of the release extinguished that liability.[72] The Pennsylvania court allowed the settling tort-feasor to recover contribution from the nonsettling tort-feasor in the amount of the consideration paid for the release; this ultimately extinguished part of the

67. MD. ANN. CODE art. 50, § 17(c) (1979). Section 17(c) provides that "a joint tort-feasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tort-feasor whose liability to the injured person is not extinguished by the settlement." *Id.*

68. *Id.*

69. *See* Baltimore Transit Co. v. State, 183 Md. 674, 679, 39 A.2d 858, 860 (1944); *supra* notes 14-17 and accompanying text.

70. Raughley v. Delaware Coach Co., 47 Del. 343, 349, 91 A.2d 245, 248 (1952).

71. 200 Pa. Super. 68, 186 A.2d 427 (1963). *Mong* involved a suit for contribution arising out of Daugherty v. Hershberger, 386 Pa. 367, 126 A.2d 730 (1956). *Daugherty* involved a personal injury suit by seven plaintiffs, resulting in seven verdicts against both Mong and Hershberger, who were joint tort-feasors. *Daugherty*, 386 Pa. at 370-71, 126 A.2d at 732. All plaintiffs executed releases in favor of Mong pursuant to settlement negotiations. In *Daugherty*, the consideration paid by Mong to three plaintiffs for three releases exceeded the entire judgments in favor of these three plaintiffs against Hershberger. *See id.* at 372, 126 A.2d 732-33. The court, applying Pennsylvania's statutory equivalent of section 19 of the Maryland UCATA, reduced these judgments against Hershberger to zero. *Daugherty*, 386 Pa. at 375, 126 A.2d at 734. Subsequently, Mong filed an action against Hershberger for contribution to the extent of Hershberger's pro rata share because, due to Mong's settlement, Hershberger did not have to pay anything to these plaintiffs. *Mong*, 200 Pa. Super. at 70, 186 A.2d at 428.

72. *Mong*, 200 Pa. Super at 72, 186 A.2d at 429.

nonsettling tort-feasor's liability.[73] This view also has been adopted by other courts in jurisdictions that have adopted the 1939 UCATA in a form similar to that adopted in Maryland.[74]

The rationale set forth in *Mong* exemplifies the most reasonable interpretation of Maryland's section 17(c) and also furthers the basic objectives of the UCATA. "As it would be inequitable for the plaintiff to recover twice, it would be just as inequitable among tortfeasors to have one benefit at the expense of another."[75] The basic statutory obligation to make contribution springs from a jointly committed tort.[76] A joint tort-feasor is called upon to make contribution only after another joint tort-feasor has discharged the joint liability under a settlement prescribed by the UCATA.[77] The inequity resulting from the *Martinez* decision can be ameliorated if the Maryland courts interpret section 17(c) of the Maryland UCATA broadly, keeping the purpose of the UCATA in mind: to bring about a just result for all parties involved.[78]

At present, the hospital has paid the plaintiffs $725,000 and the doctor has paid the plaintiffs nothing for injuries which were caused jointly by both tort-feasors. Should section 17(c) be interpreted to permit an action for contribution by the hospital against the doctor because the hospital's release effectively extinguished the doctor's liability to the plaintiffs, the hospital could recover from the doctor his pro rata share of the jury verdict, which was $300,000.

Moreover, the purpose underscoring the enactment of the Maryland UCATA is to encourage settlements.[79] For plaintiffs, the *Martinez* deci-

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73. *Id.* Hershberger's pro rata share was determined to be $5,860.50, representing one half of the total verdict. Mong's settlement reduced his actual liability to $1,839.26 by applying the consideration paid for the release to Hershberger's pro rata share. Mong sought contribution for $4,021.23, which was the portion of Hershberger's pro rata share effectively extinguished by Mong's release. *Id.* at 70, 186 A.2d at 428.

74. *See* Sochanski v. Sears, Roebuck & Co., 689 F.2d 45, 48 n.2 (3rd Cir. 1982) (applying Pennsylvania law); Castillo Vda Perdomo v. Roger Constr. Co., 560 F.2d 1146, 1150-51 (3rd Cir. 1977) (applying Pennsylvania law); Weinstein v. Stryker, 267 F. Supp. 34, 37 (E.D. Pa. 1967) (applying Pennsylvania law). *But see* Best Sanitary Disposal Co. v. Little Food Town, Inc., 339 So. 2d 222 (Fla. Dist. Ct. App. 1976) (holding that a settling joint tort-feasor could not maintain an action against the nonsettling joint tort-feasor when the settlement did not specifically provide for the release of the nonsettling joint tort-feasor). *See generally*, Note, *Settling Joint Tortfeasor Can Sue For Contribution From Nonsettling Joint Tortfeasor*, 46 MO. L. REV. 886 (1981) (discussing the ability of a settling joint tort-feasor to recover contribution).

75. *Mong*, 200 Pa. Super. at 71, 186 A.2d at 429.

76. *See* Hodges v. United States Fidelity & Guar. Co., 91 A.2d 473, 475 (D.C. 1952).

77. *Id.*

78. *See* Swartz v. Sunderland, 403 Pa. 222, 225, 169 A.2d 289, 291 (1961).

79. *See* Lahocki v. Contee Sand & Gravel Co., 41 Md. App. 579, 620, 398 A.2d 490, 513 (1979), *rev'd on other grounds sub nom.* General Motors Corp. v. Lahocki, 286 Md. 714, 410 A.2d 1039 (1980); *see also* Dorsey v. Wroten, 35 Md. App. 359, 361, 370 A.2d 577, 579 (1977) (stating that courts look with favor on compromise or settlement of lawsuits in the interest of efficiency and economic administration of justice).

sion eliminates the situation where a plaintiff settles with one joint tort-feasor and then refuses to settle with a second joint tort-feasor in the hope of proceeding to trial and recovering a windfall.[80] Allowing a party a chance at a windfall neither complies with the equitable spirit of the UCATA,[81] nor with the principle that a plaintiff should receive only one satisfaction for an injury.[82] The nonsettling joint tort-feasor appears to have nothing to lose by going to trial under the *Martinez* holding; if the consideration paid by the settling joint tort-feasor is greater than the pro rata share, the excess is credited to the judgment against the nonsettling tort-feasor and if the amount of consideration is lower than the pro rata share, the nonsettling joint tort-feasor still owes only a pro rata share. Thus, the nonsettling joint tort-feasor is placed at no disadvantage by having withheld consent to settlement. This motivation for not settling would be eliminated, however, by allowing a settling joint tort-feasor to recover contribution from a nonsettling joint tort-feasor to the extent that the settlement reduces the judgment entered against the nonsettling tort-feasor.[83] The decision of the court of appeals in *Martinez* may, in some way, affect the approach to settlements taken by future plaintiffs and defendants in joint tort-feasor actions as outlined above; however, a party's desire to settle a case may be motivated by a multitude of unpredictable reasons[84] which extend beyond the ramifications of the *Martinez* holding. The *Martinez* decision, however, assures that if a plaintiff desires to settle a case, for whatever reason, the plaintiff will be encouraged to settle with all joint tort-feasors rather than only one, because now the chance to receive a windfall has been eliminated.

The *Martinez* holding applies not only to those cases where the consideration paid for the release is greater than the entire jury verdict against a nonsettling tort-feasor, but also to the more common situation in which there is a pro rata release by one joint tort-feasor and the consideration paid for the release is less than the pro rata share.[85] Under *Martinez*, the judgment entered against the nonsettling joint tort-feasor will be reduced by the released joint tort-feasor's pro rata share because section 19 will control.[86] The *Martinez* decision has clarified the application of the Maryland UCATA regarding the effect of a pro rata release on a judgment entered against a nonreleased joint tort-feasor by directing

80. *See supra* note 66 and accompanying text.
81. *See supra* notes 69-70 and accompanying text.
82. *See supra* note 18 and accompanying text.
83. *See supra* notes 71-74 and accompanying text.
84. For example, the motivations for settlement by defendants may, in general, be summarized as follows: "(1) to avoid the risk of payment of a potentially larger sum in damages if they are found liable; (2) to eliminate the expense of further proceedings, including trial; and (3) to avoid the possibility of a *formal*, adverse judicial determination such as a finding of fault." Castillo Vda Perdomo v. Roger Constr. Co., 418 F. Supp. 529, 535 (E.D. Pa. 1976), *rev'd on other grounds*, 560 F.2d 1146 (3rd Cir. 1977).
85. *See* Chilcote v. Von Der Ahe Van Lines, 300 Md. 106, 476 A.2d 204 (1984).
86. *See id.* at 110-11, 476 A.2d at 207.

that section 19 of the Maryland UCATA is applicable to both pro rata and nonpro rata releases.[87] In future multi-defendant tort suits, such as many medical malpractice cases like the case *sub judice*, *Martinez* will play a prominent role in the decisions of the parties to settle or proceed to trial.

The decision has clarified a previously ambiguous area of the law in Maryland regarding pro rata releases and their effect on the jury verdict. With the vast majority of cases being settled, *Martinez* will enable all parties to the settlement negotiations to realize how the release of one joint tort-feasor will affect the financial situation of all parties involved and, thus, encourage a complete settlement agreement among all parties.

Daniel R. Lanier

87. Martinez v. Lopez, 300 Md. at 100-03, 476 A.2d at 201-03.