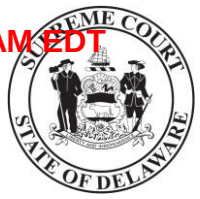
EFiled: Apr 05 2019 11:00AM EDT
Filing ID 63135946
Case Number 58,2019



IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTIANA CARE HEALTH SERVICES, INC.,	)	No. 58,2019
Defendant-Petitioner Below, Appellant,	)	On Appeal From the Superior Court of the State of Delaware, C.A. No. N17C-05-353 MMJ
v.	)	
MEEGHAN CARTER, Individually and as Administratrix of the Estate of MARGARET RACKERBY FLINT, Decedent,	)	
Plaintiff-Respondent Below, Appellee.	)	

OPENING BRIEF ON APPEAL OF DEFENDANT-PETITIONER BELOW, APPELLANT CHRISTIANA CARE HEALTH SERVICES, INC.

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Dated: 4/5/19

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NATURE OF PROCEEDINGS

This is a claim for medical negligence filed by Meeghan Carter, Individually and as Administratrix of the Estate of Margaret Rackerby Flint ("Plaintiff"). Plaintiffs initially alleged that Michael Principe, D.O. and Eric Johnson, M.D. performed a hip surgery on Ms. Flint, causing her death, in a negligent and in a wanton manner, warranting both compensatory and punitive damages. (A-1-13) Plaintiff then amended her Complaint to include Dr. Principe's medical practice, Delaware Orthopaedic Specialists, P.A. ("DOS"), and Dr. Johnson's medical practice, First State Orthopaedics, P.A. ("FSO"), and alleged that they were vicariously liable for their respective agents' conduct. (A-14-27) The only allegations against Defendant Christiana Care Health Services, Inc. ("CCHS") in all Complaints, including the operative Amended Complaint, were for agency/vicarious liability as to Dr. Principe's and Dr. Johnson's conduct. (A-1-27) CCHS denied all allegations. (A-45-50)

Shortly after the Amended Complaint was filed, Plaintiff resolved her claims against Dr. Principe and DOS through mediation and executed a Joint Tortfeasor Release ("JTFR").[1] (A-249-253) Because the claims against Dr. Johnson, FSO, and

[1] Although a JTFR was executed, Dr. Principe and DOS have not been formally dismissed and remain as parties.

CCHS remained, the parties thereafter engaged in discovery. At the close of discovery, CCHS moved for partial summary judgment and sought dismissal of all vicarious liability claims against it for Dr. Principe's and DOS' alleged conduct, as well as punitive damages. (A-150-185) Plaintiff opposed the motion. (A-242-247) At the time that CCHS' motion was filed, claims against Dr. Johnson and FSO remained. (A-296, A-301, A-316)

At the hearing on CCHS' Motion for Partial Summary Judgment, the Superior Court signed the order dismissing Dr. Johnson and FSO, leaving CCHS as the only remaining defendant. (A-264-266, A-296) After argument, the Superior Court denied CCHS' motion. (A-267-273) A copy of the Superior Court's Order dated January 15, 2019 is attached as Exhibit A.

CCHS applied for interlocutory certification of the January 15, 2019 Order in the Superior Court. (A-274-292) Plaintiff opposed. (A-332-338) By Order dated February 11, 2019, the Superior Court granted Leave for CCHS to Appeal from its Interlocutory Order dated January 15, 2019. (A-339-342) A copy of the Superior Court's Order dated February 11, 2019 is attached as Exhibit B.

CCHS filed a Notice of Appeal on February 12, 2019. (D.I. 1) This Court accepted the interlocutory appeal by Order dated March 4, 2019. (D.I. 3)

At this time, Defendant-Petitioner Below, Appellant Christiana Care Health Services, Inc. submits its Opening Brief on Appeal. For the reasons set forth below, CCHS requests that the Superior Court's Order denying CCHS' Motion for Partial Summary Judgment be reversed, that all vicarious liability claims be dismissed against it, and that judgment be entered in CCHS' favor.

SUMMARY OF ARGUMENT

I. The trial court erred when it denied CCHS' Motion for Partial Summary Judgment and permitted previously-settled vicarious liability claims as to Dr. Principe to proceed against it. Permitting Plaintiff to settle with an agent, yet continue to pursue vicarious liability claims against a principal, would encourage circuitous and wasteful litigation, undermine judicial efficiency, and permit Plaintiff a windfall at the expense of an innocent party. Such a result also contradicts the purpose of the Delaware Uniform Contribution Among Tortfeasors Law (the "UCATA"), is in conflict with the majority of jurisdictions who have interpreted their respective yet similar statutes, and fundamentally rewrites decades of medical negligence practice in the State of Delaware.

II. The trial court erred when it interpreted the JTFR to permit vicarious liability claims against CCHS to proceed, despite Plaintiff's explicit release of all claims for Dr. Principe's conduct. The explicit terms of Plaintiff's JTFR evidence an intent to settle all claims, including punitive damages claims, related to Dr. Principe, and those terms inure to the benefit of CCHS, the ostensible principle allegedly vicariously liable.

STATEMENT OF FACTS

Background

On September 30, 2015, Ms. Flint was transported to the Christiana Hospital Emergency Department due to an injury to her left hip. (A-16) She was diagnosed with a left femoral neck fracture. *Id.* Dr. Michael Principe, the on-call trauma orthopaedic surgeon, evaluated Ms. Flint and recommended a left total hip arthroplasty, and Ms. Flint agreed to undergo the procedure. (A-16-17; A-118)

Dr. Principe worked for DOS at all relevant times. (A-117, 131-133) He was an attending physician with privileges at CCHS, but he was not employed by CCHS. (A-102-104) Instead, CCHS had a contract with DOS for trauma coverage. (A-104) There has not been any claim that CCHS controlled Dr. Principe or the manner in which he operated. (A-14-28)

The left total hip surgery proceeded forward on October 1, 2015. (A-17; A-147-149) During the surgery, Dr. Principe encountered difficulty seating the acetabular cup into Ms. Flint's hip socket. (A-120-121; A-147-149) He therefore asked Dr. Eric Johnson, another orthopaedic surgeon, to assist. (A-147-149) Dr. Johnson had no oversight of Dr. Principe; instead, he was a colleague who happened to be in the operating area at the time. (A-121, A-123, A-130) Dr. Johnson helped Dr. Principe choose the appropriate cup, had no involvement in the selection or

placement of any screws, and left the operating room after helping choose the cup. (A-123, A-125, A-130-131; A-147-149; A-193-194)

After Dr. Johnson had left, Dr. Principe alone attempted to secure the cup to Ms. Flint's bone using screws. (A-147-149) The screws, however, were too long. (A-124-125) Although Dr. Principe encountered "brisk bleeding," he did not believe it was a significant issue and that it related to bleeding from the bone, which is not atypical. (A147-149; A-197-198, A-200) Dr. Johnson likewise agreed that the bleeding identified by Dr. Principe was "not something that is uncommon in hip or pelvic trauma surgery." (A-195) After Dr. Principe replaced those screws, the bleeding stopped, and he completed the operation. (A-147-149; A-126) When the patient left the operating room, Dr. Principe believed that the complication had been addressed and that the patient was stable. (A-126; A-147-149)

Ms. Flint, however, continued to deteriorate and required multiple interventions over the next two days. (A-18-20) It was determined later that, during Ms. Flint's operation, the left external iliac vein had been injured during Dr. Principe's surgery. (A-19-20) Although that was later repaired, Ms. Flint never recovered and ultimately passed away on October 3, 2015. (A-20-22) Even in retrospect, Dr. Principe believed that he had put forth his best effort, had used the appropriate techniques, and acted appropriately. (A-129)

Litigation

Ms. Carter, who is Ms. Flint's daughter, filed this instant matter and alleged that Dr. Principe and Dr. Johnson were medically negligent and acted in a willful and wanton manner in their surgical performance and in their failure to treat the surgical bleeding. (A-1-27) As to CCHS, Plaintiff alleged that it was vicariously liable for the conduct of Drs. Principe and Johnson, its alleged agents, during the October 1, 2015 surgery. *Id.* Plaintiff then amended her Complaint to add Dr. Principe's and Dr. Johnson's medical practices, DOS and FSO, respectively, again only asserting that they were vicariously liable. (A-14-27) Again, the only allegations against CCHS in the Amended Complaint relate to claims of vicarious liability for the conduct of Drs. Principe and Johnson. (A-26) Although CCHS denied all allegations of negligence, CCHS has acknowledged that Dr. Principe and Dr. Johnson were its ostensible agents during the October 1, 2015 surgery at issue. (A-45-50, A-106, A-301)

Shortly after this matter was filed, the parties attended early mediation. Plaintiff settled her claims against Dr. Principe and his practice DOS. (A-249-253) Notably, Plaintiff did not exhaust the available insurance coverage available to Dr. Principe and DOS for these claims; instead, Plaintiff settled for less than the

available coverage in exchange for a JTFR as to Dr. Principe and DOS. (A-113)

Pursuant to the JTFR, Plaintiff agreed:

> to hold harmless, acquit and forever discharge Michael Principe, D.O., Regional Orthopaedic Associates, P.A., and Delaware Orthopaedic Specialists, PA., and their respective affiliates, parents, subsidiaries, employees, agents, servants, predecessors, successors, heirs, executors, administrators, and insurers, including NORCAL Mutual Insurance Company (collectively "Releasees"), of and from all past, present and future claims, demands, damages, actions, third-party actions, causes of action or suits at law or in equity, including claims for contribution and/or indemnity, of whatever nature and particularly on account of all injuries, known and unknown, both to person and property, which have resulted or may in the future develop from medical care provided to Margaret Flint on or about September 30 - October 3, 2015 . . . .

(A-249)

Plaintiff, Dr. Principe and DOS further indicated that the JTFR was subject to the provisions of 10 *Del C.* § 6301, et seq., also known as the Uniform Contribution Among Tortfeasors Law (the "UCATA").[2] (A-250) The JTFR further noted that, in the event of a claim for contribution and indemnification, Plaintiff agreed:

> to hold harmless and indemnify Releasees [Dr. Principe and DOS] against all claims, suits or liability brought by any party, including claims for contribution or indemnification, arising out of or in any way related to the medical care that is the subject of the above referenced civil action. In the event that Releasees are held liable in indemnity or contribution to any other party as a result of the medical care that is the

[2] For sake of clarity, this brief will refer to the "Uniform Contribution Among Tortfeasors Law" as the "UCATA". *But see* 10 *Del. C.* § 6308 (referring to the Act as the "Uniform Contribution Among Tortfeasors Law").

subject of the above-referenced action, Releasors will satisfy any such decree, judgment or award on Releasees' behalf.

(A-251) CCHS was never a party to the JTFR, yet Plaintiff did not include any specific language in the JTFR to preserve any vicarious liability claims against CCHS for Dr. Principe's alleged conduct. (A-249-253)

Thereafter, the remaining parties (Dr. Johnson, FSO and CCHS) engaged in discovery. Plaintiffs identified two experts: Dr. Sridhar "Sri" Durbhakula (orthopaedic surgery) and Dr. Richard Cambria (vascular surgery). (A-177-185) Neither expert opined that Dr. Principe's performance of the surgery, or Dr. Johnson's limited involvement in the procedure, was willful, wanton, reckless or malicious. (A-177-185)

CCHS Motion for Partial Summary Judgment

At the close of discovery, CCHS moved for summary judgment as to all claims against it, including punitive damages, for Dr. Principe's care.[3] (A-150-185) Specifically, CCHS argued that Plaintiff's decision to settle all claims against Dr. Principe and DOS, pursuant to the JTFR, precluded any vicarious liability claims

[3] The motion was filed based on Plaintiff's apparent intent to proceed against CCHS for Dr. Principe's conduct, despite his settlement.

against CCHS for Dr. Principe's alleged conduct. (A-150-185) Because there was no clear Delaware law on this specific issue, CCHS argued that this condition was consistent with the majority of jurisdictions, with the purpose of the UCATA to encourage settlement, and with other analogous Delaware law. (A-151-156) CCHS further argued that permitting Plaintiff's vicarious liability claims to proceed against CCHS for Dr. Principe's conduct would improperly penalize CCHS, which in this case was an innocent party, and would permit Plaintiff "two bites out of the apple." *Id.* It further argued that there was no basis to award punitive damages in this case.[4] (A-156-157)

In response, Plaintiff argued that Dr. Principe and CCHS are "joint tortfeasors" under the UCATA and that, therefore, Plaintiff could pursue her vicarious liability claims against CCHS despite Dr. Principe's settlement. (A-242-247) Plaintiff further argued that she did not need to reserve any rights to pursue vicarious liability claims, and that the punitive damages for Dr. Principe's conduct were proper as to CCHS. (A242-247)

[4] Although CCHS' interlocutory appeal did not seek review of the Superior Court's decision denying CCHS' request to dismiss punitive damages, dismissal of the vicarious liability claims against CCHS for Dr. Principe's conduct would include dismissal of the punitive damages claims for the reasons discussed herein.

The Superior Court heard argument on CCHS' motion on December 10, 2018. (A-263) Initially, the Court dismissed Dr. Johnson and FSO at the hearing. (A-264-266, A-296) CCHS' counsel explained that, in his experience, the settlement (and ultimate dismissal) of an agent typically leads to the plaintiff agreeing to dismiss the principal. (A-299-301) That is especially true when the plaintiff settles for less than the policy limits of the agent, as occurred in this case. (A-299-301, 304-305) CCHS also noted that, because it was not a party to the JTFR, it had no involvement in the wording of the JTFR. (A-301-302) CCHS emphasized that, if the case proceeded to trial, its share of liability was indivisible from that of Dr. Principe (and, hence, a "single share"). (A-304) Said differently, the jury would only be evaluating Dr. Principe's conduct, not CCHS', as there were no direct negligence claims against CCHS. (A-304)

CCHS further emphasized that Plaintiff could never recover anything against CCHS and would, in essence, pay her own damages in the event of a verdict because of the common law and contractual rights of contribution and indemnification that CCHS had with Dr. Principe and DOS, who had similar rights under the JTFR. (A-305-306) That Plaintiff could not recover anything was consistent with the terms of the JTFR, in which Plaintiff released all claims against Dr. Principe's and DOS' affiliates. (A-307-308)

Plaintiff responded that she had no expectation that Dr. Principe's and DOS' settlement would release the vicarious liability claims against CCHS based on what occurred at mediation. (A-310-311) Plaintiff suggested that CCHS understood that, if it did not settle at mediation, litigation would proceed as to claims for Dr. Principe's conduct. (A-310-313) She further argued that the relevant case law and the UCATA supported her position that dismissal of the agent did not extinguish the vicarious liability claims against the principal. (A-314-315)

In response, CCHS emphasized that it remained in the case because its other ostensible agent, Dr. Johnson, remained in the case until the hearing. (A-315-316) It reemphasized that Plaintiff failed to preserve any vicarious liability claims against CCHS in the JTFR. (A-316-317)

Superior Court Decision and Appeal

On January 15, 2019, the Superior Court denied CCHS' motion. (A-267-273) The Superior Court discussed the UCATA and Delaware common law and held that CCHS was a "joint tortfeasor" under the statute, even though its only potential liability was vicarious. (A-270, 273) The Superior Court further held that the JTFR did not operate to extinguish CCHS' potential vicarious liability. (A-270-271) The

Court also permitted Plaintiff to proceed with her punitive damages claim. (A-271-272)

On January 23, 2019, CCHS requested that the Superior Court certify its decision for an interlocutory appeal to this Court pursuant to Supreme Court Rule 42(b). Plaintiff, in opposition, argued that CCHS "made the decision to litigate" and understood that it was a joint tortfeasor. (A-333) Plaintiff also argued that CCHS' conduct at mediation supported this conclusion. (A-334-337)

By Order dated February 11, 2019, the Superior Court granted CCHS' request for leave to file an interlocutory appeal. (A-339-342) This appeal followed.

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT PERMITTED THE PLAINTIFF, WHO SETTLED ALL CLAIMS AGAINST CCHS' OSTENSIBLE AGENT, TO PROCEED NEVERTHELESS AGAINST CCHS (THE PRINCIPAL) ON A THEORY OF VICARIOUS LIABILITY FOR THE VERY SAME CLAIMS THAT WERE RELEASED.

A. Question Presented

Did the trial court err when it permitted Plaintiff to maintain her vicarious liability claims against CCHS for the conduct of its ostensible agent after that agent had resolved all claims against him and executed a joint tortfeasor release?

Defendant preserved this issue by filing a motion for partial summary judgment, presenting argument on its motion, seeking leave to file an interlocutory appeal, and filing an interlocutory appeal in this Court. (A-150-185, A-263, A-274-331)

B. Scope of Review

This Court reviews the Superior Court's denial of a motion for summary judgment on undisputed facts *de novo* to determine "whether the trial court erred in formulating or applying legal precepts." *Nationwide Mut. Ins. Co. v. Starr*, 575 A.2d 1083, 1086 (Del. 1990). The Court further reviews questions of the interpretation of Delaware law *de novo*. *Parkcentral Glob., L.P. v. Brown Inv. Mgmt., L.P.*, 1 A.3d

291, 296 (Del. 2010). Finally, the interpretation of a settlement agreement is reviewed under contract principles and is, thus, reviewed *de novo*. *Trexler v. Billingsley,* 166 A.3d 101, 2017 WL 2665059, at *3 (Del. 2017) (citing *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010)).

C. Merits of Argument

In denying CCHS' Motion for Partial Summary Judgment, the Superior Court misapplied the UCATA to vicarious liability situations, upended decades of medical negligence practice, and contradicted the terms of the JTFR that Plaintiff herself executed. The Superior Court's decision not only stands in contrast to the position of the majority of jurisdictions that have held that an innocent principal, like CCHS, is not a "joint tortfeasor" under their analogous UCATA statutes, but it also allows Plaintiff an impermissible windfall at an innocent party's (CCHS') expense and encourages circuitous and wasteful litigation. As a result, this Court should reverse the Superior Court's Interlocutory Order, enter judgment in favor of CCHS, and dismiss this matter.

The issue facing this Court -- whether the servant's release applies to the master for vicarious liability claims -- is a matter of first impression. *See Blackshear v. Clark*, 391 A.2d 747, 748 (Del. 1978) ("We express no view about a case in which

the servant is released but not a master."). The starting point, therefore, for the analysis is the 1939 version of the Uniform Contribution Among Tortfeasors Act, which was adopted by Delaware in 1949. *In re Rural/Metro Corp. Stockholders Litig.*, 102 A.3d 205, 222, 234 (Del. Ch. 2014); 47 *Del. Laws*, c. 151, §§ 1-8 (1949). The UCATA was adopted to preserve the right of contribution among tortfeasors and to overrule the earlier common law rule that the release of one tortfeasor released all. *Raughley v. Delaware Coach Co.*, 91 A.2d 245, 248 (Del. Super. Ct. 1952) (basic purpose of UCATA is "to permit the equitable enforcement of contribution by one who has paid more than his share of the common tort liability"). Although the various jurisdictions have not adopted it uniformly, seven jurisdictions (in addition to Delaware) have adopted the 1939 version of the UCATA. *In re Rural/Metro Corp. Stockholders Litig.*, 102 A.3d at 233 (identifying Arkansas, Hawaii, Maryland, New Mexico, Pennsylvania, Rhode Island, and South Dakota); 12 U.L.A. 195 (1975) (1955 Prefatory Note).

Under the UCATA, a joint tortfeasor means "2 or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them." 10 *Del. C.* § 6301. The plain language of the statute does not address the issue presented here – whether a master and servant, in the vicarious liability context, are joint tortfeasors when the

plaintiff has released the agent. Delaware has looked for guidance in those seven jurisdictions as to how to interpret aspects of the UCATA when there is not clear guidance from the statute or the Supreme Court. *In re Rural/Metro Corp. Stockholders Litig.*, 102 A.3d at 233-34. Similarly, although Delaware Courts must evaluate the plain language of the UCATA, Courts should consider other sources when its plain language conflicts with other decisional case law and sources. *Id.* at 227. *See also Speiser v. Baker*, 525 A.2d 1001, 1009 (Del. Ch. 1987) ("A due respect for the legislative will requires a sympathetic reading of statutes designed to promote the attainment of the end sought.").

Other jurisdictions have, however, faced the issue presented here. For example, in *Estate of Williams ex rel. Williams v. Vandeberg*, 620 N.W.2d 187 (S.D. 2000), the Supreme Court of South Dakota addressed a case where a plaintiff settled his wrongful death claims against the driver of a car.[5] The plaintiff executed a

[5] Notably, South Dakota's UCATA is nearly identical to Delaware's UCATA and is one of the seven other states that adopted the 1939 version of the UCATA. *Compare, for example,* S.D. Codified Laws § 15-8-11 with 10 *Del. C.* § 6301 (defining "joint tortfeasors" as "two or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them"); S.D. Codified Laws § 15-8-17 *with* 10 *Del. C.* § 6304(a) (stating "[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

release which provided a right of indemnity against the plaintiff and which preserved claims against other defendants. *Id.* at 188-89. Plaintiff then sued the driver's partners on a theory of vicarious liability, but the partners moved for summary judgment and asserted that they could not be liable based on the earlier release of their alleged agent. *Id.* at 189.

The *Williams* Court, noting that it was an issue of first impression in South Dakota, noted that the majority of jurisdictions considering this issue have held that a general release precludes a recovery under a vicarious liability theory against an alleged principal. *Williams*, 620 N.W.2d at 189. *See also* Annotation, *Release of One Joint Tortfeasor as Discharging Liability of Others Under Uniform Contribution Among Tortfeasors Act and Other Statutes Expressly Governing Effect of Release,* 6 A.L.R.5th 883 (1992); Annotation, *Release of, or Covenant not to Sue, One Primarily Liable for Tort, but Expressly Reserving Rights Against One Secondarily Liable, as Bar to Recovery Against Latter,* 24 A.L.R.4th 547, 555–560 (1983); Annotation, *Release of (or Covenant not to Sue) Master or Principal as Affecting Liability of Servant or Agent for Tort, or Vice Versa,* 92 A.L.R.2d 533 (1963). The

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that the total claim shall be reduced, if greater than the consideration paid."). As a result, its holding is helpful in interpreting Delaware's UCATA. *In re Rural/Metro Corp. Stockholders Litig.*, 102 A.3d at 233-34.

Williams Court noted that this was consistent with South Dakota's UCATA. *Williams*, 620 N.W.2d at 189. The rationale for so holding is that there is a "single share" of liability that belongs to both the master and servant, and the release of the servant "necessarily release[s]" the master. *Id.* (citing *Biddle v. Sartori Mem. Hosp.*, 518 N.W.2d 795, 798 (Iowa 1994)). Therefore, the *Williams* Court granted summary judgment to the principals based on the UCATA and the terms of the release, even though vicarious liability claims had been preserved expressly. *Id.*

As noted in *Williams,* the strong weight of authority supports the position that a master and servant are not "joint tortfeasors" in the situation where the agent is released but the principal is not. Indeed, many other courts that have implemented the 1939 UCATA have concluded that, in the master-servant relationship, the parties are not "joint tortfeasors" under the UCATA. *See, e.g., Mamalis v. Atlas Van Lines, Inc.*, 560 A.2d 1380, 1383 (Pa. 1989); *Anne Arundel Med. Ctr., Inc. v. Condon*, 649 A.2d 1189, 1193 (Md. Ct. Spec. App. 1994); *DelSanto v. Hyundai Motor Fin. Co.*, 882 A.2d 561, 565-66 (R.I. 2005); *Kinetics, Inc. v. El Paso Products Co.*, 653 P.2d 522, 528 (N.M. Ct. App. 1982). And, as recognized in *Williams*, the majority of courts find that the release of an agent serves to release the vicariously liability claims against the principal. *See, e.g., Horejsi by Anton v. Anderson*, 353 N.W.2d 316, 318 (N.D. 1984) (release of agent requires release of master because they have

a "single share" of liability); *Copeland v. Humana of Kentucky, Inc.*, 769 S.W.2d 67, 70 (Ky. Ct. App. 1989) (release of agent inures to the benefit of the principal where claim is that superior's liability is vicarious and derivative of agent's liability); *Craven v. Lawson*, 534 S.W.2d 653, 656 (Tenn. 1976) (reviewing the history of the UCATA and holding that it "has no application to the master-servant, principal-agent relationship, where liability is solely derivative" and where agent has resolved its claims); *Dickey v. Meier's Estate*, 197 N.W.2d 385, 388 (Neb. 1972) (release of agent releases principal, even where release specifically reserves all claims against a principal, in vicarious liability context); *Max v. Spaeth*, 349 S.W.2d 1, 3 (Mo. 1961)[6] (because principal is only liable for act of servant, as compared to something he did as a tortfeasor, a release of the agent serves to release the principal); *Biddle v. Sartori Mem'l Hosp.*, 518 N.W.2d 795, 799 (Iowa 1994) (quotations omitted) (hospital and agent were "properly treated as a single party" when agent's claims were released, thereby extinguishing vicarious liability claims against hospital);

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[6] The Missouri Supreme Court later addressed the situation this Court faced in *Blackshear* (i.e., the plaintiff resolved all claims against the employer, and the agent sought dismissal on the basis of the release). *Aherron v. St. John's Mercy Med. Ctr.*, 713 S.W.2d 498 (Mo. 1986). Despite the fact that the *Aherron* Court noted that language in *Max* that the release of the agent serves to release the principal in vicarious liability situations was "dicta," it did not overrule *Max* or suggest that this language was erroneous. *Aherron*, 713 S.W.2d at 500-01.

Nat'l Sec. Fire & Cas. Co. v. Barnes, 984 S.W.2d 80, 82 (Ark. Ct. App. 1999) (valid release of servant releases master under doctrine of *respondeat superior*); *Seaboard Air Line R. Co. v. Coastal Distrib. Co.*, 273 F. Supp. 340, 343 (D.S.C. 1967) (applying South Carolina law to conclude that release of agent requires release of principal); *Theophelis v. Lansing Gen. Hosp.*, 424 N.W.2d 478, 486 (Mich. 1988) (release of nurse and doctor has "the legal effect of discharging the hospital from vicarious liability for their acts or omissions"); *Elias v. Unisys Corp.*, 573 N.E.2d 946, 949 (Mass. 1991) (release of agent precludes claim against principal who is liable solely on theory of *respondeat superior*); *J & J Timber Co. v. Broome*, 932 So.2d 1, 6 (Miss. 2006) ("Where a party's suit against an employer is based on respondeat superior, the vicarious liability claim itself is extinguished when the solely negligent employee is released."); *Andrade v. Johnson*, 546 S.E.2d 665, 670 (S.C. Ct. App. 2001), *rev'd on other grounds*, 588 S.E.2d 588 (S.C. 2003) (noting that agent and principal are not "joint tortfeasors" in vicarious liability situations); *Reedon of Faribault, Inc., v. Fidelity and Guaranty Ins. Underwriters, Inc.*, 418 N.W.2d 488, 490-91 (Minn. 1988) (finding release of agent served to release principal from vicarious liability because the agent would "not benefit from a release which left it open to an indemnity suit" by the principal); *Mid–Continent Pipeline Co. v. Crauthers*, 267 P.2d 568 (Okla. 1954) (finding release of agent serves to

release vicariously liable principal). Again, these other decisions are instructive in evaluating why the UCATA does not alter the fundamental premise that liability of a principal and agent is shared, rendering the vicariously liable principal immune from further claims when an agent settles its claims. *In re Rural/Metro Corp. Stockholders Litig.*, 102 A.3d at 227.

The position endorsed by the majority of states (including the majority of the decisions interpreting their respective versions of the 1939 UCATA) also recognizes the fundamental distinction between joint tortfeasors (parties who are separately liable in tort for a claimed injury) and parties in the principal-agent relationship (parties who share a single liability rather than have independent bases for liability). Indeed, it is this fundamental dichotomy that should lead this Court to find that the UCATA requires a plaintiff's voluntary release of the agent to inure to the principal in the vicarious liability context:

> The rules of vicarious liability respond to a specific need in the law of torts: how to fully compensate an injury caused by the act of a single tortfeasor. Upon a showing of agency, vicarious liability increases the likelihood that an injury will be compensated, by providing two funds from which a plaintiff may recover. If the ultimately responsible agent is unavailable or lacks the ability to pay, the innocent victim has recourse against the principal. If the agent is available or has means to pay, invocation of the doctrine is unnecessary because the injured party has a fund from which to recover.

> The system of contribution among joint tortfeasors, of which the Uniform Act's apportionment rules are a key component, has arisen completely apart from the system of vicarious liability and indemnity and meets an entirely distinct problem: how to compensate an injury inflicted by the acts of more than one tortfeasor. Unlike the liability of a principal, the liability of a joint tortfeasor is direct (because the tortfeasor actually contributed to the plaintiff's injury) and divisible (since the conduct of at least one other also contributed to the injury).

Mamalis v. Atlas Van Lines, Inc., 528 A.2d 198, 200-01 (Pa. Super. Ct. 1987), *aff'd*, 560 A.2d 1380 (Pa. 1989). Where an agent has released the claims through a settlement and has, therefore, been able to recover, there is no need to proceed a second time against the principal. *Id.*

In similar situations, Delaware Courts themselves have recognized that a principal may be immune from any vicarious liability claims due to the agent's dismissal. In *Clark v. Brooks*, 377 A.2d 365 (Del. Super. Ct. 1977), *aff'd sub nom. Blackshear v. Clark*, 391 A.2d 747 (Del. 1978), the Superior Court was faced with the opposite situation than that presented here: the plaintiff had released the employer (the principal) but not the agent (the employee), yet the agent sought the benefits of the release. In *Clark*, the Superior Court noted that the UCATA did not distinguish between an employer and an employee for purposes of determining whether each was a tortfeasor. *Clark*, 377 A.2d at 370-71. However, the Court noted that, in the employer-employee context, the employer has a right to seek

reimbursement for any amounts paid to the plaintiff. *Id.* at 371 (citations omitted). It further noted that, for an employer to be liable, the employee must be found liable first. *Id.* As a result, the Superior Court recognized the logic that a release of an employee might bar vicarious liability claims against the principal:

> Since the liability of the employer in such cases is dependent upon at least a showing of tort on the part of the employee, it is understandable that some courts have held that where no liability exists on the part of the employee there cannot be liability on the part of the employer and hence they have extended this reasoning to apply to a release of the employee's liability by the injured person.

Clark, 377 A.2d at 371. Because the employer's only basis for liability in this situation was due to the conduct of the employee, "there is no injury which was 'caused by or attributable to' the employer . . . since the injury was caused solely by defendant [the agent], and hence, as between them, is attributable totally to defendant." *Clark*, 377 A.2d at 373. This dicta suggested that the release of the agent would inure to the principal for claims of vicarious liability.

This Court affirmed *Clark* in *Blackshear v. Clark*, 391 A.2d 747 (Del. 1978). The *Blackshear* Court first noted that, in the situation where a principal is released but the agent is not (which does <u>not</u> apply here and which the *Blackshear* Court specifically excluded from its analysis), 10 *Del. C.* § 6301 rendered both the Center (the principal) and Dr. Blackshear (its agent) liable as joint tortfeasors. *Blackshear*,

391 A.2d at 748. It then held that it could not, as a matter of law, determine that the release executed with the principal dismissed the agent. *Id.* Again, the *Blackshear* Court made clear that its holding was limited to the circumstances of that case and did not apply in the situation facing the Court at bar. *Id.*

Although the issue at bar is a matter of first impression, other Delaware decisions support the proposition, endorsed by the majority of courts, that the settlement by an agent is equally applicable to the vicariously liable principal. For example, in *Reyes v. Kent Gen. Hosp., Inc.*, 487 A.2d 1142 (Del. 1984), this Court focused on the alleged negligence of the hospital's agent in evaluating the hospital's potential liability, as the agent "is the focus of our inquiry." *Reyes*, 487 A.2d at 1144. Likewise, in *Greco v. Univ. of Delaware*, 619 A.2d 900 (Del. 1993), this Court noted that "a viable cause of action against the employee for negligence is a condition precedent to imputing vicarious liability for such negligence to the employer pursuant to the theory of *respondeat superior*." *Id.* at 903 (citing 2 *Mechem on Agency* § 2012, pp. 1581-82 (1914) and Restatement (Second) of Agency § 217B(2) (1958) and its comments) (emphasis added). In both cases, because the employee was not liable to the plaintiff, the vicarious liability claims against his employer were

likewise barred.[7] *Reyes*, 487 A.2d at 1145; *Greco*, 619 A.2d at 904. Other decisions are in accord. *See, e.g., Curtis v. Martelli*, 1996 WL 111168, at *3 (Del. Super. Ct. Jan. 23, 1996) (granting summary judgment to city for claims barred by agent's immunity); *Montgomery-Foraker v. Christina Sch. Dist.*, 2013 WL 6113244, at *4 (Del. Super. Ct. Oct. 30, 2013) (noting that school district can only be liable under *respondeat superior* theory if its employee-teacher is liable).

The UCATA's language, its intent, and case law from Delaware and the majority of courts, taken together, should lead to the conclusion that Plaintiff's release of Dr. Principe inures to CCHS' benefit and releases all vicarious liability claims for his conduct. As recognized by Delaware law, CCHS has an absolute right of contribution and indemnification against Dr. Principe for his conduct. *Clark*, 377 A.2d at 371. And, there is no "injury" that CCHS caused to Plaintiff, as the alleged tort is attributable totally to Dr. Principe. *Id.* Finding that Dr. Principe's release also inures to CCHS for the very same claims is not only consistent with the majority of courts (including those interpreting the 1939 UCATA) that have considered this issue, but is also consistent with Delaware case law that has found that the

[7] Dr. Principe expressly denied any liability in the JTFR. (A-249-253) By agreeing to its terms and signing the JTFR, Plaintiff has agreed to Dr. Principe's denial of liability in the litigation context. *See Argument II.C., infra.*

vicariously liable principle attains those benefits that belong to the agent (in this case, those released by the JTFR). *See, e.g., Greco*, 619 A.2d 900. Indeed, the Delaware Court of Chancery has already suggested that the release of an agent releases the principal for vicarious liability claims and is consistent with Delaware law. *See First State Staffing Plus, Inc. v. Montgomery Mut. Ins. Co.*, 2005 WL 2173993, at *10 (Del. Ch. Sept. 6, 2005). Simply, all persuasive authority, from this jurisdiction and elsewhere, lead to the inexorable conclusion that Plaintiff's release of all claims against Dr. Principe requires the release of the vicarious liability claims for his conduct against CCHS, the principal.

Although a minority of courts have held that the release of an agent does not require the release of the principal for vicarious liability claims, that holding is illogical and should be rejected by this Court. *See, e.g., Alaska Airlines, Inc. v. Sweat,* 568 P.2d 916, 930 (Alaska 1977) (noting that a release by an agent does not release the principal because both are "liable in tort for the same injury," even if the principal is not a "tort-feasor," and because the principal has right of indemnification);[8] *Alsup v. Firestone Tire & Rubber Co.*, 461 N.E.2d 361, 364 (Ill. 1984) (noting that, unless other parties are specifically identified in a release, other parties will not be

[8] Alaska repealed its UCATA in 1989, after this decision. *See Burke v. Webb Boats, Inc.*, 37 P.3d 811, 813 (Okla. 2001).

dismissed irrespective of their relationship); *ING Bank, FSB v. Am. Reporting Co., LLC*, 859 F. Supp. 2d 700, 705 (D. Del. 2012) (analyzing the Delaware UCATA in the context of the master-servant relationship).[9] If the minority interpretation were adopted, this Court would be encouraging subsequent "circuitous" action for indemnity between the principal and the agent "that is merely derivative and secondary." *Williams*, 620 N.W.2d at 191. Said differently, the minority position discourages settlement because the agent's incentive to settle would be reduced due to a fear of liability for indemnity to the principal. *Horejsi*, 353 N.W.2d at 319. Likewise, in that scenario, the principal may not defend the case with any vigor, "secure in the knowledge that whatever damages are assessed against him can be recovered by way of indemnity from the servant or agent." *Id.* Accepting the minority position would therefore encourage further litigation, contrary to the purpose of UCATA and Delaware law. *See, e.g., Horejsi,* 353 N.W.2d at 320 (noting

[9] The *ING* Court acknowledged Delaware law on point that suggested that the release of an agent would release the vicariously liability principal but declined to accept it. *ING Bank, FSB*, 859 F. Supp. 2d at 704 n.6 (citing *First State Staffing Plus, Inc.*, 2005 WL 2173993 at *10). That may have due, in part, to the release expressly preserving claims against the principal, something which is lacking here. *Id.* at 704, 704 n.5. As discussed herein, this Court should accept the position identified in *First State Staffing Plus, Inc.*, consistent with the majority of courts, the underlying purpose of the UCATA, and other Delaware decisions and find that a settlement with an agent releases the principal from vicarious liability.

that finding the release of the servant releases the principal for vicarious liability claims "avoids the indemnity cycle and ensures the released tort-feasor that he has 'bought his peace'").

To accept the minority position would also serve to penalize an innocent party. *Anne Arundel Med. Ctr., Inc.*, 649 A.2d at 1196 (noting that the minority position permits the plaintiff "two bites out of the apple" and creates "a double exposure [that] would act as a disincentive for agents ever to agree to a settlement"). That CCHS is penalized is even more evident in this case, where the Superior Court held that it may be vicariously liable for both compensatory and punitive damages. There is nothing alleged to suggest that CCHS (as compared to Dr. Principe) engaged in any wanton or malicious conduct that would warrant an award of punitive damages as required. *Taylor v. Christiana Care Health Servs., Inc.*, 2012 WL 1415779, at *2 (Del. Super. Ct. Feb. 27, 2012) (punitive damages serve "to punish the wrongdoer as a deterrent, not just to make the injured party whole again"); 18 *Del. C.* § 6855. Forcing CCHS to face punitive liability for the conduct of a settled agent would render punitive damages meaningless, as any finding against CCHS would not serve as any deterrent to Dr. Principe. Yet, accepting the minority position (and the Superior Court's holding below) would encourage this exact inequitable result. *In re Rural/Metro Corp. Stockholders Litig.*, 102 A.3d at 237 (noting that the UCATA

"was intended to apply equitable considerations in the relationships of injured parties and tortfeasors"). The Court should avoid this unreasonable interpretation that would run contrary to the UCATA's purpose and create an unpalatable inequity. *Dennis v. State*, 41 A.3d 391, 393 (Del. 2012) (court should not apply statute literally if doing so "would lead to an unreasonable or absurd result that could not have been intended by the legislature").

That CCHS should not be vicariously liable after Dr. Principe resolved his claims is also consistent with the practice of medical negligence cases in Delaware. It is routine in medical negligence cases for a plaintiff to settle with the agent (*i.e.*, the party in interest) and dismiss the principal (typically the medical practice or the hospital). Specifically, in cases where the parties value the case as less than the agent's (for example, a doctor's) insurance policy limits, the plaintiff will typically settle for the amount within those limits and then dismiss both the agent and the hospital.[10] Here, it seems obvious that Plaintiff valued her claims against Dr. Principe as less than Dr. Principe's and DOS' two insurance limits, since she settled with both of them for less than the available coverage. (A-113-114) To now seek to hold CCHS, an innocent party that has committed no tort, liable when Plaintiff

[10] This practice is, of course, consistent with the majority position CCHS urges here.

willingly chose to forego additional coverage from the very parties they released is unfair and counterintuitive.[11] *Mamalis*, 528 A.2d at 200–01 ("If the agent is available or has means to pay, invocation of the doctrine is unnecessary because the injured party has a fund from which to recover.") As discussed herein, there is no good reason to turn this decades-long practice on its head, and the Superior Court's decision should be reversed with judgment entered in CCHS' favor.

[11] Indeed, Plaintiff has disadvantaged CCHS by forcing it to defend care -- including a claim for punitive damages for conduct that has nothing to do with its conduct -- for an agent who no longer has any stake in this case, who settled for less than his available coverage, and who is not represented by CCHS.

II. THE TRIAL COURT ERRED WHEN IT FAILED TO ENFORCE THE JTFR PURSUANT TO ITS TERMS AND FIND THAT ALL CLAIMS FOR DR. PRINCIPE'S CONDUCT, INCLUDING VICARIOUS LIABILITY CLAIMS, WERE DISMISSED.

A. Question Presented

Did the trial court err when it failed to enforce the terms of the JTFR, which was executed by Plaintiff willingly, and find that all claims for Dr. Principe's conduct were dismissed?

Defendants preserved this issue by filing a motion for partial summary judgment, presenting argument on its motion, seeking leave to file an interlocutory appeal, and filing an interlocutory appeal in this Court. (A-150-185, A-263, A-274-331)

B. Scope of Review

This Court reviews the Superior Court's denial of a motion for summary judgment on undisputed facts *de novo* to determine "whether the trial court erred in formulating or applying legal precepts." *Nationwide Mut. Ins. Co.*, 575 A.2d at 1086. The Court further reviews questions of the interpretation of Delaware law *de novo*. *Parkcentral Glob., L.P.,* 1 A.3d at 296. Finally, the interpretation of a settlement agreement is reviewed under contract principles and is, thus, reviewed *de novo*. *Trexler,* 2017 WL 2665059 at *3.

C. Merits of Argument

Separate and apart from the UCATA, the JTFR in this case indicates that Plaintiff intended to resolve all claims, including any vicarious liability claims as to CCHS for Dr. Principe's conduct. In evaluating the terms of a release, the terms "must be read as a whole and the intent of the parties must be gathered from the entire agreement." *Clum v. Daisy Concrete, Inc.*, 578 A.2d 684, 685 (Del. Super. Ct. 1989) (citing *Raughley*, 91 A.2d at 248). Because Delaware law favors settlements short of trial, the Court should enforce the language of the release to effectuate that purpose. *Id.* When read as a whole, the Court should conclude that Plaintiff intended to release all claims, vicarious or otherwise, as to Dr. Principe's conduct.

In this case, the JTFR states, in pertinent part:

> Meeghan Carter, on her own behalf and as Administrator of the Estate of Margaret Rackerby Flint . . . do hereby and for their heirs, executors, administrators, successors and assigns release, hold harmless, acquit and forever discharge Michael Principe, D.O., Regional Orthopaedic Associates, P.A., and Delaware Orthopaedic Specialists, PA., and their respective affiliates, parents, subsidiaries, employees, agents, servants, predecessors, successors, heirs, executors, administrators, and insurers . . . from all past, present and future claims, . . . causes of action or suits at law or in equity, including claims for contribution and/or indemnity, of whatever nature and particularly on account of all injuries, known and unknown, . . . which have resulted or may in the future develop from medical care provided to Margaret Flint on or about September 30 - October 3, 2015, including but not limited to the claims set forth

> in the Complaint filed in the Superior Court in and for New Castle County, Delaware under Civil Action No. N17C-05-353 MMJ, and captioned MEEGHAN CARTER, Individually, and as Administratrix of the Estate of MARGARET RACKERBY FLINT v. MICHAEL PRINCIPE, D.O., DELAWARE ORTHOPAEDIC SPECIALISTS, P.A., ERIC JOHNSON, M.D., FIRST STATE ORTHOPAEDICS, P.A., AND CHRISTIANA CARE HEALTH SERVICES. INC.

(A-249) By its own terms, Plaintiff specifically acknowledged that she was dismissing all claims "for medical care" raised against Dr. Principe and his practice for any care he rendered, including any care alleged to have been negligent, reckless, or malicious in the underlying lawsuit. (A-249) Dismissing the vicarious liability claims against CCHS for Dr. Principe's conduct, which Plaintiff voluntarily released, would therefore enforce the terms of the JTFR as Plaintiff contemplated. *Clum*, 578 A.2d at 68.

Similarly, the JTFR indicates that Plaintiff did not preserve any vicarious liability claims for Dr. Principe's conduct. The *Clark* Court noted that "a release given to the agent, without reserving rights against the principal, may discharge the latter." *Clark*, 377 A.2d at 374 (citing Restatement (Second) of Agency § 217A cmt. a (1958)) (emphasis added). Plaintiff was certainly free to insert a provision to that effect in the JTFR, as she was the one negotiating it with Dr. Principe and DOS.[12]

[12] CCHS, of course, had no involvement in the JTFR, meaning that Plaintiff and Dr. Principe could have inserted any language for claims as to CCHS without CCHS

This further evidences an intent by Plaintiff specifically to resolve all claims for Dr. Principe's conduct against all parties, including CCHS.

Plaintiff's anticipated argument that the terms of the release do not apply to CCHS because of the JTFR's UCATA language should be rejected. By its own terms, the JTFR states that the other defendants' liability "shall be reduced by the greater of Releasees' [Dr. Principe's and DOS'] *pro rata* share of liability or responsibility for such damages or the sum [paid at settlement]." (A-251) But in this case, CCHS' liability with Dr. Principe is identical. In other words, if this matter proceeded to trial, Dr. Principe's *pro rata* share of liability can only be 0% (a finding of no liability) or 100% (a finding of liability), as he will be the only party on the verdict form. *In re Rural/Metro Corp. Stockholders Litigation*, 102 A.3d 205 at 261 (noting that the UCATA uses the term "pro rata" to mean "proportionate"). Under either scenario, Plaintiff cannot recover anything: (1) a defense verdict precludes any award to Plaintiff, and (2) a finding of liability against Dr. Principe would require a 100% reduction (i.e., "the greater of Releasees' *pro rata* share of liability or responsibility for such damages") of any award against CCHS pursuant to the terms of JTFR (to which Plaintiff agreed) and 10 *Del. C.* § 6304(a). Because the

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being able to object.

jury could not find that CCHS was a "joint tortfeasor" by the very terms of the JTFR (as well as the UCATA) to which Plaintiff agreed, it is clear that Plaintiff intended to eliminate any claims for Dr. Principe's conduct by the JTFR. *Med. Ctr. of Delaware, Inc. v. Mullins*, 637 A.2d 6, 9 (Del. 1994) (noting the need for a judicial finding of tortfeasor status when one party has settled its claim and has denied liability through a release).

Interpreting the JTFR to preclude all vicarious liability claims against CCHS is not only consistent with Plaintiff's evidenced intent, but would also avoid a trial that would be a complete waste of time and of judicial resources. This was discussed in *Delmarva Power & Light Co. v. First S. Util. Const., Inc.*, 2008 WL 495739 (Del. Super. Ct. Feb. 21, 2008), a case in which an agent settled before trial and where the plaintiff sought to hold the principal vicariously liable. Specifically, in *Delmarva Power & Light Co.*, a subcontractor called Shaffer Construction Company ("Shaffer") subcontracted with First South Utility Construction, Inc. ("First South") to perform boring operations. During an operation, Shaffer damaged power lines belonging to Delmarva Power & Light Co. ("Delmarva"). Delmarva sued both Shaffer (the agent) and First South (the principal). Shortly after litigation began, Delmarva and Shaffer resolved their claims, and Delmarva executed a release in favor of Shaffer in which Shaffer denied all liability and sought the protections of

10 *Del. C.* § 6304(b) for contribution and indemnification. Delmarva further agreed to indemnify and hold Shaffer harmless for any claims made against Shaffer. Delmarva, nonetheless, pressed the very same claims against First South on a theory of vicarious liability.

The *Delmarva Power & Light Co.* Court, however, concluded that the terms of the release precluded Delmarva's derivative claims against First South. First, the Superior Court held that any attempt by Delmarva (the plaintiff) to discharge Shaffer's liability for contribution or indemnification to First South in the release was unenforceable, as First South (the principal) was not a party to the release. *Delmarva Power & Light Co.*, 2008 WL 495739 at *4. Second, the Superior Court noted that, by the terms of the release, Delmarva agreed to indemnify Shaffer for any damages it may owe to First South. *Id.* at *5. Because Shaffer was contractually bound to indemnify First South under their subcontractor agreement as well, and because the only theory of liability against First South was for vicarious liability of its agent, the Court noted that the plaintiff could not recover anything:

> When read in tandem, the two indemnification provisions establish that if Delmarva proves at trial that First South is vicariously liable for Shaffer's negligence: (1) Shaffer must indemnify First South, under the Subcontract, for its own negligence as a subcontractor; and (2) Delmarva would have to indemnify Shaffer for any payments made to First South as a result of its negligence. Thus, as a practical matter, Delmarva would be paying its own damages and, in essence, be

> "litigating against itself." Trial would thus be "a complete and utter waste of judicial resources."

Id. at *5.[13] The Superior Court then noted that, with a claim of vicarious liability alone, Delmarva could never recover:

> Without a separate basis for direct liability, Delmarva has only two outcomes at trial. Under the first outcome, if Delmarva loses at trial, it would have to reimburse First South for attorney's fees and costs and not recover any damages. Under the second outcome, if Delmarva proceeded to trial on its theory and won a judgment in its favor, First South would be required to pay damages and attorney's fees to Delmarva. At that point, First South would seek indemnification, including attorney's fees and costs, from Shaffer for its negligent omission in failing to hand dig. Shaffer would then seek indemnification-again, including attorney's fees and costs from Delmarva under the Release. Thus, even if Delmarva succeeded at trial, it would ultimately be unable to recover anything from First South.

Id. at *7. Because either outcome would render a trial "complete and utter waste of judicial resources[,]" the Court dismissed the case. *Id.* at *8.

The situation presented by Plaintiff's decision to settle with Dr. Principe and DOS is almost identical to the situation in *Delmarva Power & Light Co., supra*, and should lead to the same result. Just as in *Delmarva Power & Light Co.*, Plaintiff settled with an agent of CCHS and agreed to hold him harmless. Just as in *Delmarva*

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[13] Notably, Delmarva conceded that this interpretation -- that it could not recover anything pursuant to the terms of the two documents -- was correct. *Delmarva Power & Light Co.*, 2008 WL 495739 at *5.

Power & Light Co., under any scenario, Plaintiff cannot recover anything from CCHS by virtue of the JTFR, the cross-claim for contribution and indemnification, and Delaware law requiring reimbursement for master-servant liability. And, just as in *Delmarva Power & Light Co.*, trial would be a "complete and utter waste of judicial resources." *Delmarva Power & Light Co.*, 2008 WL 495739 at *8. The Superior Court erred in failing to recognize this reality, which is compelled by Plaintiff's own JTFR that she executed. *See In re Rural/Metro Corp. Stockholders Litig.*, 102 A.3d 205, 223–24 (Del. Ch. 2014) (noting that plaintiff "assumes the risk that the released tortfeasor's pro rata share of recovery is greater than the settlement amount and agrees to reduce any recovery against the non-released tortfeasor by the amount of the released tortfeasor's pro rata share").

Plaintiff's suggestion to the Superior Court that CCHS somehow waived this position through its participation in mediation and this litigation is not only incorrect, but has no bearing on the analysis. First, irrespective of whether Dr. Principe and DOS resolved Plaintiff's claims against them, CCHS was going to (and did) remain a defendant due to the claims of vicarious liability for Dr. Johnson's and FSO's conduct that Plaintiff herself made. (A-14-27) There was not, therefore, any waiver of any positions. Second, settlement discussions cannot be considered "to prove liability for or invalidity of the claim or its amount." D.R.E. 408. That CCHS

participated in early mediation, even if it felt it had no liability, is of no moment, as its participation "may be motivated by a desire to terminate the litigation rather than from any concession of weakness of position." *Capital Mgmt. Co. v. Brown*, 813 A.2d 1094, 1100 (Del. 2002). Indeed, CCHS has never admitted liability for Dr. Principe and has, in fact, denied such lability. (A-45-50) Simply, CCHS' decision to participate in early mediation has no bearing on whether Plaintiff settled all claims against all parties (including CCHS) for Dr. Principe's conduct nor on how the Court should interpret the JTFR.

Separately, CCHS has asserted a crossclaim for contribution and indemnification against Dr. Principe and DOS.[14] (A-45-50) If there was a finding of liability against CCHS for the vicarious conduct of Dr. Principe at trial, CCHS would seek contribution and indemnification from its agent (Dr. Principe) for the entire amount, as its only potential liability is derivative.[15] In that situation, however, Dr. Principe would be able to recoup those amounts directly from Plaintiff pursuant to the JTFR:

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[14] This is separate and apart from any potential contractual bases that CCHS may have to assert for contribution and indemnification as to Dr. Principe and DOS.

[15] Neither Dr. Principe/DOS nor Plaintiff can discharge any obligation for contribution and indemnification that Dr. Principe and DOS may owe to CCHS through the JTFR, as CCHS was not a signatory to it. *Delmarva Power & Light Co.*, 2008 WL 495739 at *4; 10 *Del. C.* § 6305.

> Releasors [Plaintiff] agree to hold harmless and indemnify Releasees [Dr. Principe and DOS] against all claims, suits or liability brought by any party, including claims for contribution or indemnification, arising out of or in any way related to the medical care that is the subject of the above referenced civil action. In the event that Releasees are held liable in indemnity or contribution to any other party as a result of the medical care that is the subject of the above-referenced action, Releasors will satisfy any such decree, judgment or award on Releasees' behalf.

(A-251) Because Plaintiff has agreed "to hold harmless and indemnify" Dr. Principe for all claims for contribution and indemnification related to this case, she has agreed to pay her own damages in the event of a finding of liability for Dr. Principe's conduct.[16] This leads to the "circuitous" and wasteful litigation that the majority of courts sought to avoid. *Williams*, 620 N.W.2d at 191. More importantly, it demonstrates that Plaintiff intended to release all claims, including vicarious liability claims, related to Dr. Principe's conduct. (A-249); *Clum*, 578 A.2d at 685. Reversal of the Superior Court's decision is therefore necessary "to secure the just, speedy and inexpensive determination of [this] proceeding" by entering judgment in CCHS' favor based on the terms of the JTFR. Super. Ct. Civ. R. 1.

[16] The cross-claim is consistent with the principle that CCHS, as principal, would have the right to seek reimbursement from Dr. Principe and his practice, as CCHS' potential vicarious liability is derivative of the claim against its agent. *Clark*, 377 A.2d at 371.

CONCLUSION

The majority of jurisdictions, the purpose of the UCATA, Delaware case law, and the Plaintiff's own JTFR make clear that, in the setting of vicarious liability where an agent has settled his claims, the vicarious liability claims against the principal should be extinguished. The Superior Court erred in denying CCHS' Motion for Partial Summary Judgment when it concluded otherwise. For the reasons set forth herein, Defendant-Petitioner Below, Appellant Christiana Care Health Services, Inc., respectfully requests that this Court reverse the interlocutory decision of the Superior Court below, grant its motion for partial summary judgment, and enter judgment in its favor.

Respectfully submitted,

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Dated: 4/5/19

CERTIFICATE OF SERVICE

I, Joshua H. Meyeroff, Esquire, hereby certify that on this 5th day of April, 2019, I have caused the following documents to be served electronically on the parties listed below:

Opening Brief on Appeal of Defendant-Petitioner Below, Appellant Christiana Care Health Services, Inc.

Appendix in Support of Opening Brief on Appeal of Defendant-Petitioner Below, Appellant Christiana Care Health Services, Inc.

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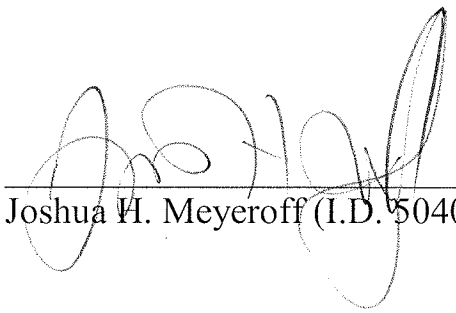

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