

**BEWARE OF THE SO-CALLED
"BOILERPLATE" LANGUAGE IN YOUR DIVORCE
SEPARATION AGREEMENT, INCLUDING
REFERENCES TO "MUTUAL RELEASES"**

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Anecdotally, lawyers typically tell their clients that at least 90% of all Connecticut divorce cases get resolved without a full court trial, one way or another, with the entry of an uncontested divorce judgment, the terms of which are typically set forth in a written separation agreement. Frequently, the parties to such divorce agreements focus his/her attention on the key terms in the separation agreement concerning alimony, child support, property distributions, custody, parental contact, and other provisions that have been at the forefront of the negotiations process.

Sometimes overlooked in the final agreement review process is what superficially may appear to be the more mundane provisions which the divorcing parties and occasionally their lawyers may refer to as the so-called boilerplate language. Unfortunately, as Michelle Watkins (hereinafter referred to as "Michelle") found out in a law suit she filed against her ex-Husband, James Watkins (hereinafter referred to as "James") after the entry of their divorce judgment, which resulted in the Appellate Court decision reported in the case of **Michelle Watkins vs. James Watkins** 152 Conn App. 99 (8/5/2014). Failing to understand the entire separation agreement can occasionally lead to negative financial repercussions to a party, such as Michelle, who seeks financial relief post judgment against one's former spouse.

Michelle and James were married on June 12, 2004. Prior to the dissolution of their marriage by a Connecticut court on March 14, 2012 they were involved in an altercation that allegedly resulted in Michelle sustaining serious personal injuries. On March 14, 2012, two important things happened to Michelle and James: (1). Michelle commenced a law suit against James claiming damages resulting from personal injuries she had suffered during their altercation on January 7, 2011 (hereinafter referred to as the "Personal Injury Law Suit"); and (2). After the Personal Injury Law Suit had been served by a marshal upon James pursuant to Connecticut service of process statutes, the parties on that same day executed their divorce separation agreement **and** the Court dissolved their marriage in the presence of the parties and their attorneys.

The separation agreement, as incorporated into the divorce judgment stated in part that:

"...Wife and Husband desire to settle all financial and property matters between them created by their marriage

by effectuating an equitable asset and liability distribution and by **terminating all present and future rights and obligations, except those reserved or created hereunder, which either of them now or hereafter may have with respect to any property or estate of the other...**"

"...**Mutual Releases**This Agreement is the entire agreement of the parties. Except as to the obligations created hereunder and reservant tot he parties hereto, the rights set forth in this Agreement is the **entire understanding** of the parties and each party hereby releases and relinquishes to the other party any and all claims that either party has against the other for any and all property rights and causes of action from any behavior or occurrence **that happened during the marriage...**" (Quoted from page 109 of the Appellate Court decision, with all highlighting provided by me)

It is my experience from approximately 35 years of practice that language similar to the provisions quoted above are contained in virtually every divorce separation agreement that I have either drafted or reviewed for a client.

James' lawyers in the Personal Injury Law Suit filed as part of his defense in that case a motion that sought to have the Court grant summary judgment in his favor, thus awarding Michelle no financial damages, based essentially on the language quoted above from their divorce agreement. James' motion for summary judgment was granted by the trial court (i.e. he won) and Michelle's appeal to the Appellate Court resulted in the trial court's decision being Affirmed (i.e James' victory was upheld and he thus owed her no money in the Personal Injury Law Suit).

The trial court had ruled in James' favor because the Mutual Release provision of the divorce separation agreement was clear and unambiguous in foreclosing Michelle from filing the Personal Injury Law Suit. Michelle's lawyers in the Personal Injury Law Suit tried to make several arguments to offset the language of the Mutual Release provision, including but not limited to: (1). The mutual release language was ambiguous because it did not specifically refer to the Personal Injury Law Suit or its underlying claims; and (2). The divorce action and the separation agreement only related to financial and property matters and that the Personal Injury Law Suit was separate. Both the trial court and appellate court rejected these arguments asserted on behalf of Michelle.

The courts found that despite Michelle's allegations in the Personal Injury Law Suit, the Mutual Release language in the divorce separation agreement was clear and unambiguous. By signing the agreement and entering it as a court order at the time of the entry of her divorce judgment, she was precluded from filing the Personal Injury Law Suit and receiving any financial damages from James as a result. As the Appellate Court stated in part, "...This language means precisely what it says: that each party releases the other from any and all causes of action from any behavior or occurrence that happened during the marriage...." Michelle, you are out of luck and left without any further recovery against James!

Lessons Learned: As part of a final review of separation agreements with clients, good lawyering would suggest also reviewing the boiler plate provisions with the client, such as the Mutual Release language, and ask if there are any personal injury claims that one's client has against the other spouse (note typically the attorney - client relationship would have uncovered such claims long before the day of the entry of the divorce judgment). And for the client, you must read and understand the entire document. If the personal injury claims have been dealt with in the negotiations process, it would be wise to mention it in the agreement - perhaps in a subtle way. If it has not been addressed and the spouse seeks to keep that claim open, then it should be specifically listed as an exception in the Mutual Release language, **and possibly in BOLD PRINT!!**.