IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JAMES PATRICK	)	
Plaintiff,	)	
	)	
v.	)	**C.A. No. N12C-05-220 MJB**
	)	
JOHN R. ELLIS,	)	
ROBERT LEE PURCIVAL and	)	
JMC CONTRACTORS, INC., a	)	
Pennsylvania corporation,	)	
Defendants.	)	
	)	
	)	

Submitted: July 2, 2013
Decided: October 18, 2013

Upon Defendants' Motion for Summary Judgment **GRANTED.**

OPINION

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BRADY, J.

I. INTRODUCTION

On June 4, 2013, Defendant John R. Ellis ("Ellis") moved for Summary Judgment pursuant to Superior Court Rule of Civil Procedure 56.[1] On June 19, 2013, Co-defendants Robert Lee Purcival ("Purcival") and JMC Contractors, Inc. ("JMC") filed a letter with the Court, joining Ellis' motion and adopting Ellis' arguments in support of summary judgment.[2] Plaintiff James Patrick ("Patrick") filed a Response in Opposition to the Motion for Summary Judgment on June 25, 2013.[3] The Court heard oral argument on July 2, 2013, and reserved ruling on the motion. This is the Court's decision. The Motion for Summary Judgment is **GRANTED**.

II. BACKGROUND

This case is a personal injury action brought by Patrick against Ellis, Purcival, and JMC (collectively "Defendants").[4] The action arises from a motor vehicle collision that occurred on May 20, 2011, when a motor vehicle driven by Ellis struck a dump truck driven by Purcival, which is owned by JMC.[5] Ellis' vehicle subsequently struck Patrick's vehicle.[6] The collision occurred on New Castle Avenue and Terminal Avenue in Wilmington, Delaware.[7] Patrick alleges the accident occurred because Purcival ran a red light and hit the car driven by Ellis, knocking it into the other lane where Patrick was stopped at a red light.[8] An ambulance was called and Patrick told the emergency medical technician that he was experiencing a headache and neck pain.[9] Patrick was then taken to

[1] Def. Ellis' Mot. for Summ. J. (June 4, 2013); Super Ct. Civ. R. 56.
[2] Defs. Purcival and JMC's Letter to the Court Joining Def. Ellis' Mot. for Summ. J. (June 19, 2013).
[3] Pl.'s Reply to Def.'s Mot. for Summ. J. (June 25, 2013).
[4] Pl.'s Compl. (May 24, 2012).
[5] *Id.* at 2.
[6] *Id.*
[7] *Id.*
[8] Def. Ellis' Ex. 5 in Mot. for Summ. J. (June 4, 2013) at 3.
[9] *Id.*

the emergency room at Saint Francis Hospital in Wilmington, Delaware.[10] Patrick does not recall what treatment he received at the emergency room. However, Patrick recalls reporting his primary-care physician a couple days following the accident, at which point he was experiencing neck pain, headaches, and muscle spasms.

On May 24, 2011, Tonya Saunders ("Saunders"), the field-bodily-injury adjuster for Ellis' insurance carrier, spoke with Patrick and the claims adjuster for Patrick's insurance carrier in a three-way telephone conversation, which was recorded.[11] During the phone conversation, Saunders scheduled an appointment to go to Patrick's home the next day to review his bodily injury claim and reimburse his property damage deductible.[12]

The day after the phone conversation, May 25, 2011, Saunders met with Patrick at his home.[13] No one other than Patrick and Saunders was present at the meeting. During the meeting, which lasted over an hour, Patrick signed a general release ("Release") and an addendum ("Addendum")[14] (collectively "Settlement Documents"), releasing all claims against five parties—including Ellis, Purcival, and JMC—that related to the May 20, 2011 accident, in exchange for Saunders providing Patrick with a check for $750.[15] The signing of the Settlement Documents was not witnessed or notarized.[16] Saunders also gave Patrick a letter requesting that he sign a release of medical records.[17]

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[10] *Id.*
[11] Def. Ellis' Ex. 5 in Mot. for Summ. J. (June 4, 2013).
[12] Saunders Dep. at 9-10.
[13] Def. Ellis' Mot. for Summ. J. (June 4, 2013) at 2.
[14] The Addendum relates to Patrick being a Medicare recipient because he is disabled. Thus, the primary document that released all Defendants is the Release—the relevant language of which appears below.
[15] Def. Ellis' Mot. for Summ. J. (June 4, 2013) at 2.
[16] Saunders Dep. at 35-36.
[17] Def. Ellis' Mot. for Summ. J. at 2.

After showing the check to his fiancé, Carlis Tate ("Tate"), Patrick cashed the check on May 31, 2011, six days after the meeting with Saunders.[18]

Patrick filed a Complaint on May 24, 2012, alleging that the collision was caused by "the joint and several negligen[ce] and wanton conduct" of the Ellis, Purcival, and JMC.[19] Patrick contends that he sustained serious bodily injury as a result of the collision.[20] He further asserts that he has undergone significant physical pain and mental anguish as a result of the collision, and will continue to endure the same indefinitely.[21] Patrick alleges a loss and depreciation of his earning power, now and for the indefinite future.[22] Patrick seeks compensation for money he has already expended to treat the injuries he alleges he sustained as a result of the collision and for future medical expenses.[23]

Ellis filed an Answer denying negligence and asserting two affirmative defenses.[24] Ellis' first affirmative defense asserts that that the accident was caused, in whole or in part, by the actions of the other Defendants.[25] Second, Ellis asserts that Patrick's action is barred by the doctrine of accord and satisfaction, citing the fact that Patrick signed the Settlement Documents.[26] Purcival and JMC, through joint counsel, filed an Answer

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[18] *Id.*
[19] Specifically, Patrick alleges that the defendants' conduct was "negligent and wanton" in that: (1) They failed to maintain a proper lookout; (2) They failed to maintain control over their motor vehicles; (3) They operated their motor vehicles in a careless and inattentive manner (in violation of 21 *Del. C.* §4176); (4) They failed to yield the right of way in violation of 21 *Del. C.* §4132; and (5) They disregarded a red light in violation of 21 *Del. C.* §4107. *Id.*
[20] Pl.'s Compl. (May 24, 2012) at 2.
[21] *Id.*
[22] *Id.*
[23] *Id.* at 3.
[24] Def. Ellis' Reply to Pl.'s Compl. (Aug. 1, 2012) at 1-2.
[25] *Id.* at 1.
[26] *Id.* at 2.

denying negligence on the ground that they were not the cause of the collision.[27] Although Purcival and JMC deny negligence in all respects, they asserted a cross-claim for contribution or indemnity from the other parties in the event that they are found liable to Patrick in any respect.[28]

Patrick was deposed on January 17, 2013. During his deposition, Patrick testified that he was taking approximately eleven medications either the day of or the night before signing the Release and Addendum.[29] Patrick explained that he had been taking all but one of the eleven medications, an unidentified steroid for pain he was prescribed as a result of the accident,[30] for a significant period prior to the accident because of a disability that is unrelated to the case *sub judice*.[31] Patrick testified that he was feeling out of sorts when Saunders came to his house for their May 25, 2011 meeting and he informed Saunders of this when they met, stating he told her "I'm not even with you today . . . I'm not feeling it because I had took [*sic*] my medicine and stuff like that."[32] Although Patrick testified he felt that way because he was medicated, he did so without identifying the specific medications he believes affected him,[33] and Patrick later testified that none of the medications, when identified individually, gave him any problems thinking clearly.[34] However, Patrick did state that the steroid he was prescribed "might" have affected his

[27] Defs. Purcival and JMC's Reply to Pl.'s Compl. (Aug. 27, 2012) at 2. They also put forth five affirmative defenses as follows: (1) Plaintiff has failed to state a claim upon which relief may be granted; (2) Plaintiff's injuries, if any, are not as severe as alleged; (3) Plaintiff has failed to mitigate his damages, if any; (4) Defendants' actions were not the proximate cause of Plaintiff's injuries, if any; and (5) Plaintiff was comparatively negligent and proximately caused all alleged injuries and damages by failing to maintain a proper lookout, failing to maintain proper control of his vehicle, and being otherwise negligent. *Id.*
[28] *Id.*
[29] Patrick Dep. (Jan. 17, 2013) at 14.
[30] Patrick could not recall what doctor prescribed him the steroids. *Id*. at 19.
[31] *Id*. at 15-17.
[32] *Id*. at 13.
[33] *Id*.
[34] *Id*. at 56-57.

clarity of thought, but he was unsure.[35] Patrick confirmed at his deposition that, although he only has a seventh-grade education, he can read, but chose not to read the Settlement Documents, and instead "just scan[ned]" them because he wasn't feeling well and he wanted Saunders to leave.[36]

Saunders was deposed on April 23, 2013. Saunders testified that she told Patrick that the $750 was based on his injury and treatment to date.[37] Saunders also testified that she made clear to Patrick in the conversation that the Settlement Documents released all listed parties from liability, including Ellis, Purcival, and JMC.[38] Saunders confirmed that she gave Patrick an opportunity to read the Settlement Documents and ask questions.[39] However, Patrick merely skimmed the Settlement Documents, and did not have any questions or request additional time.[40]

III. PARTIES' CONTENTIONS

A. Defendants

Defendants argue that the following facts are undisputed and support summary judgment: (1) Patrick did not ask Saunders any questions about the Settlement Documents or check; (2) Patrick showed the check to his fiancé, Tate, who asked no questions about why he was given the check; (3) Patrick signed the Settlement Documents without reading either; and (4) Patrick held the $750 check for six days before he signed and cashed it.[41] Therefore, because Patrick confirmed the above facts at his deposition, Defendants argue "there is no genuine issue as to whether Plaintiff signed the release and addendum and . . .

[35] *Id*. Additionally, Patrick refused to answer when asked whether one of the eleven medications, Fioricet, prevented him from thinking clearly. *Id*. at 57.
[36] *Id*. at 31.
[37] Saunders Dep. (Apr. 23, 2013) at 43.
[38] *Id.* at 40-41.
[39] *Id*. at 28.
[40] *Id.* at 49.
[41] Def. Ellis' Mot. for Summ. J. (June 4, 2013) at 2.

cashed . . . the $750 offered to him."[42] While acknowledging that a release, such as the one in this case, can be set aside by this Court for fraud, duress, coercion, or mutual mistake, Defendants contend there is no evidence of such in the present case.

B. Patrick

Patrick does not dispute that he signed the Settlement Documents or that he cashed the check. However, Patrick contends that he signed the Settlement Documents without understanding he was releasing Defendants from liability.[43] Patrick argues that he was not in a proper frame of mind during the May 25 meeting with Saunders[44] and that he made Saunders aware, stating he told Saunders, "I'm not even with you today . . . I'm not feeling it because I had took [*sic*] my medicine and stuff like that."[45] Patrick contends that Saunders was pushed him to sign the Settlement Documents.[46]

Patrick argues Saunders' conduct rises to the level of duress, coercion, fraud, and undue influence.[47] Patrick relies on the same facts for his duress, coercion, and undue influence claims.[48] In contending Saunders subjected him to duress, coercion, and undue influence, thereby causing him to sign the Settlement Documents without appreciating the legal significance, Patrick initially alleged that Saunders took advantage of him, because he informed Saunders that he was "not with her" when they met on May 25.[49] However, Patrick now takes an inconsistent position, asserting in his response opposing summary

[42] *Id*. at 3.
[43] *Id.* at 53-55.
[44] Patrick Dep. (Jan. 17, 2013) at 13.
[45] *Id.*
[46] *Id*. at 25.
[47] *Id.* at 1. The Court notes that Patrick's response opposing summary judgment does not clearly identify, at points, what facts correspond to duress, coercion, and undue influence claims. Rather, Patrick initially states that duress, coercion, and undue influence existed, and then proceeds to discuss Saunders' alleged misconduct, only at points identifying the specific defense alleged.
[48] *See supra* note 47.
[49] Patrick Dep., at 13.

judgment that Saunders "did not ask or know if [he] was on medications."[50] Patrick also claims there was duress, coercion, and undue influence because of the disparity in education and sophistication between Patrick, "a 64-year old disabled sick man with a 7th grade education" who had "never been in an accident before and never had to deal with an insurance company," and Saunders, "a trained and experienced insurance claims adjustor who has handled between 300 and 500 claims over a 10 year span."[51] Patrick claims that he felt Saunders took advantage of him by presenting him with release documents, totaling six pages, within a short time after his accident.[52] Additionally, because Saunders presented him with a request for his medical records, Patrick contends that Saunders created the impression that it was not the end of Patrick's claim, and that the medical records obtained would be used to investigate his claim further.[53] Patrick further points out, as evidence of wrongdoing, that Saunders declined to have the Settlement Documents witnessed or notarized.[54] Regarding fraud, Patrick alleges that Saunders committed fraud when she allowed him to sign a release indicating that he had consulted with counsel even though Saunders was unsure whether Patrick had done so.[55] Patrick states that the Release effectively released five parties from liability for an average of $150 each, and argues that a reasonable person who understood its effect would not have signed the Release.[56]

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[50]Patrick states in his response in opposition to summary judgment that Saunders "did not ask or know if Patrick was on medications" (Pl.'s Reply to Def.'s Mot. for Summ. J. (June 25, 2013) at 1), but testified in his deposition that he told her, "I'm not even with you today… I'm not feeling it because I had took [sic] my medicine and stuff like that" (Patrick Dep. (Jan. 17, 2013) at 13).

[51] Pl.'s Reply to Def.'s Mot. for Summ. J. (June 25, 2013) at 2.

[52] *Id.*

[53] Pl.'s Reply to Def.'s Mot. for Summ. J. (June 25, 2013) at 2. Patrick does not clarify whether he is alleging that Saunders intentionally created the misimpression, merely knowingly allowed Patrick to draw a mistaken inference, or unknowingly created the misimpression.

[54]*Id.* at 2-3 ("The release and addendum in this case total six pages. For some unknown reason, Saunders chose not . . . have them witness or have them notarized. No reasonable explanation was given by her for this action.").

[55]*Id.* at 3.

[56] *Id.*

IV. STANDARD OF REVIEW

This Court may grant summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[57] A motion for summary judgment, however, should not be granted when material issues of fact are in dispute or if the record lacks the information necessary to determine the application of the law to the facts.[58] A dispute about a material fact is genuine when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."[59] Thus, the issue is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law."[60]

Although the party moving for summary judgment initially bears the burden of demonstrating that the undisputed facts support his legal claims,[61] once the movant makes this showing, the burden "shifts to the non-moving party to demonstrate that there are material issues of fact for resolution by the ultimate fact-finder."[62] When considering a motion for summary judgment, the Court must view the evidence in the light most favorable to the nonmoving party.[63]

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[57]Super. Ct. Civ. R. 56(c).
[58]*Bernal v. Feliciano*, 2013 WL 1871756, at *2 (Del. Super. Ct. May 1, 2013) (citing *Ebersole v. Lowengrub*, 180 A.2d 467, 468 (Del. 1962)).
[59]*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 243 (1986).
[60]*Id.*
[61]*Hughes ex rel. Hughes v. Christina Sch. Dist.*, 2008 WL 73710, at *2 (Del. Super. Ct. Jan. 7, 2008) (citing *Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 879-80 (Del. Super. Ct. 2005)).
[62]*Id.*
[63]*Joseph v. Jamesway Corp.*, 1997 WL 524126, at *1 (Del. Super. Ct. July 9, 1997) (citing *Billops v. Magness Const. Co*., 391 A.2d 196, 197 (Del. Super. Ct. 1978)).

V. DISCUSSION

In Delaware, a general release that is "clear and unambiguous" is enforceable unless the plaintiff can demonstrate that there was "fraud, duress, coercion, or mutual mistake concerning the existence of a party's injuries."[64] Additionally, a settlement agreement, like any contract, may be set aside if the executing party lacked capacity, for example, as a result of undue influence.[65] The party raising duress, coercion, fraud, or undue influence bears the burden of proof.[66] "A release will not lightly be set aside where the language is clear and unambiguous. When construing a release, the intent of the parties as to its scope and effect control[s], and the court will look to the overall language of the release to determine the parties' intent."[67]

Further, it is the signer's responsibility—here, Patrick's—to read and understand a release before signing it. Therefore, a release will not be invalidated because an individual chose not to read it before signing.[68] Further, provided that the signer had ample opportunity to read the document before signing, a release that is clear and unambiguous will not be invalidated even if the insurance agent presenting the release made misleading,

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[64] *Edge of the Woods, Ltd. P'ship v. Wilmington Sav. Fund Soc'y, FSB*, 2000 WL 305448, at *4 (Del. Super. Ct. Feb.7, 2000). *See also infra* note 7 and accompanying text.

[65] *E.g.*, *Cunningham v. Walter*, 1998 WL 473007, at *3 (Del. Super. Ct. Apr. 2, 1998) (indicating that undue influence, if present, may cause a release to be invalidated); *Williams v. Chancellor Care Ctr. of Delmar*, 2009 WL 1101620, at *4 (Del. Super. Apr. 22, 2009) ("[L]ike any other contract, a settlement agreement may be invalidated under certain circumstances including fraud, illegality, duress, undue influence and mistake.").

[66] *A.I. v. A.I.*, 2007 WL 1518640, at *1 (Del. Fam. Ct. Mar. 8, 2007) (citing *Robert O. v. Ecmel A.*, 460 A.2d 1321 (Del. 1983)) ("[T]he party desiring such rescission has the initial burden of demonstrating undue influence, force, coercion, duress, or fraud. If that is shown, then the burden switches to the other party to establish that the agreement was fair at the time executed and that it was entered knowingly and without fraud, force, or coercion.").

[67] *Bernal*, 2013 WL 1871756 at *3 (citing *Adams v. Jankouskas*, 452 A.2d 148, 156 (Del. 1982)); *see also id.* at *3 (citing *Seven Instruments, LLC v. AD Capital, LLC*, 32 A.3d 391, 396 (Del. Ch. 2011)) ("When a claim falls within the plain language of the release, the claim should be dismissed.").

[68] *Id.* at *3.

reckless, or false statements,[69] because, "even assuming a misrepresentation was made, the Plaintiff cannot avoid the release because . . . the clear language of the release would have alerted Plaintiff of its contents."[70]

A. Release Clearly and Unambiguously Releases Defendants

There is no genuine dispute that the Release in the case *sub judice* clearly and unambiguously releases all claims against Defendants arising from the May 20, 2011, automobile accident. The Release provides, in pertinent part:

> [Patrick] hereby generally releases, acquits, and forever discharge[s] John R. Ellis, Robert Purcival, JMC Contractors . . . and all of his/her/their agents, principals, partners, officers, directors, employees, associates, insurers, hiers, executors, administrators, predecessors, successors, affiliated entities (all sometimes hereinafter the "Released Party") for each and all claims, suits, actions, causes of actions, administrative claims, statutory claims, damages, claims for damages of whatever nature or description, whether known or unknown . . . which [Patrick] has against the Released Party, as now appearing or as may appear at any time in the future, from the beginning of creation to the date of this Release, including all claims arising out of the or in any way related to an accident that occurred on or about 05-20-2011, at or near Route 9 and Terminal Avenue in New Castle County, Delaware.[71]

Therefore, because all of Patrick's "claim[s] fall[] within the plain language of the release, the claim[s] should be dismissed,"[72] unless Patrick can establish that the Release was signed under duress, coercion, fraud, due to a mutual mistake, or at a point when he lacked capacity.[73] Patrick does not claim there was a mutual mistake, and the Court finds none *sua sponte*. Patrick does, however, argue he signed the Release and Addendum due to duress, coercion, undue influence, and fraud.

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[69] *Bernal*, 2013 WL 1871756 at *3-4 (citing *Hicks v. Soroka*, 188 A.2d 133, 139-40 (Del. Super. Ct. 1963)).
[70] *Id.*
[71] Def. Ellis' Mot. for Summ. J., Ex. 1.
[72] *Bernal*, 2013 WL 1871756 at *3-4 (citing *Seven Instruments, LLC v. AD Capital, LLC*, 32 A.3d 391, 396 (Del. Ch. 2011)).
[73] *Edge of the Woods, Ltd. P'ship v. Wilmington Sav. Fund Soc'y, FSB*, 2000 WL 305448, at *4 (Del. Super. Ct. Feb.7, 2000).

B. Duress, Coercion, and Undue Influence

Patrick argues that he was subjected to duress, coercion, and undue influence by Saunders on the basis that (1) he was tired and under the influence of prescription medication during the meeting in which he signed the Release and Addendum; (2) Saunders was aware of his diminished capacity; and (3) Saunders took advantage of his diminished capacity and his relative lack of sophistication in insurance matters, citing the fact that Saunders presented him with a medical release request.[74]

Undue influence exists when the following four elements are present: 1) a person is subject to influence; 2) an opportunity to exert undue influence; 3) a disposition to exert such influence; and 4) a result indicating the presence of undue influence.[75] Duress and coercion are not mutually distinctive. Rather, duress is sometimes called coercion.[76] The elements for duress, and therefore coercion, are similar to undue influence.[77] In order for duress or coercion to exist, there must be (1) a "wrongful" act that (2) overcomes the will of the person (3) who has no adequate legal remedy to protect his interest.[78] "In order for the second element to be met, [the] wrongful act must have been of such a nature as to

[74] *See generally* Pl.'s Reply to Def.'s Mot. for Summ. J. (June 25, 2013). *See supra* note 47 (explaining that Patrick relies on the same facts to support duress, coercion, and undue influence)

[75] *Robert O. v. Ecmel A*., 460 A.2d 1321, 1323 (Del. 1983), *overruled on other grounds by Sanders v. Sanders*, 570 A.2d 1189 (Del. 1990)*Cunningham v. Walter*, 1998 WL 473007 at *3 (Del. Super. Ct. Apr. 2, 1998) (citing *Robert O. v. Ecmel A*., 460 A.2d 1321, 1323 (Del. Super. Ct. 1983) (applying the four elements for undue influence to a claim for duress).

[76] *Wonnum v. State*, 942 A.2d 569, 577 (Del. 2007) (citing Delaware Criminal Code Commentary § 431, at 93 (1973)) (stating that duress is "sometimes called coercion"). *AQSR India Private, Ltd. v. Bureau Veritas Holdings, Inc*., 2009 WL 1707910, at *14 (Del. Ch. June 16, 2009) ("A party alleging actionable coercion or duress must plead (i) a wrongful act; (ii) which overcomes the will of the aggrieved party; and (iii) that the party has no adequate legal remedy to protect itself.").

[77] *Robert O. v. Ecmel A*., 460 A.2d 1321, 1323 (Del. Super. Ct. 1983) (applying the four elements for undue influence to a claim for duress).

[78] *Way Rd. Dev. Co. v. Snavely*, 1992 WL 19969, at *3 (Del. Super. Ct. Jan. 31, 1992).

override the judgment and will of the other party."[79] As stated above, Patrick, the party asserting duress, coercion, and undue influence, bears the burden of proof.[80]

Patrick argues that his case is analogous to *Webb v. Dickerson*, where the Court found a genuine issue of material fact existed regarding whether the plaintiff's decision to sign a release was a product of duress, coercion, or undue influence.[81] In *Webb*, although the parties had previously arranged a different time and place to meet, the plaintiff was approached by the defendant's insurance adjuster by chance when he was at a salvage yard retrieving personal belongings from his damaged motor vehicle.[82] Prior to going to the salvage yard, the plaintiff had taken two prescription medicines, Flexeril, a muscle relaxant, and Percocet, a narcotic.[83] At the salvage yard, the plaintiff and the adjuster stood while communicating, which caused the plaintiff significant pain.[84] During their fifteen-minute impromptu meeting, the plaintiff executed a general release.[85] The plaintiff testified that on the day he signed the release (1) he felt "pretty messed up" and "pretty drugged up"; (2) all he wanted to was to go home because of the pain; and (3) he felt the insurance adjustor had "fast talked him" into signing the release.[86] The insurance adjustor testified that she thought that the plaintiff understood what he was doing and that he did not indicate to her that he was on medication at the time they met.[87]

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[79] *A.L. v. D.L.*, 2011 WL 5345412, at *15 (Del. Fam. Ct. June 16, 2011).
[80] *A.I. v. A.I.*, 2007 WL 1518640, at *1 (Del. Fam. Ct. Mar. 8, 2007) (citing *Robert O. v. Ecmel A.*, 460 A.2d 1321 (Del. 1983)) ("[T]he party desiring such rescission has the initial burden of demonstrating undue influence, force, coercion, duress, or fraud. If that is shown, then the burden switches to the other party to establish that the agreement was fair at the time executed and that it was entered knowingly and without fraud, force, or coercion.").
[81] *Webb*, 2002 WL 388121.
[82] *Webb*, 2002 WL 388121, at *2.
[83] *Id.*
[84] *Id.* at *3.
[85] *Id.* at *2.
[86] *Id.* at *5.
[87] *Id.*

In denying summary judgment and finding a factual issue as the whether or not the plaintiff signed the general release under duress, coercion, or undue influence, the Court cited the facts that (1) the release was executed within twenty-four hours after an accident serious enough to send the plaintiff to the emergency room; (2) the release was executed while the plaintiff was standing in significant pain during the fifteen-minute impromptu meeting at the salvage yard, even though the adjustor had already scheduled a formal meeting with the plaintiff at his home for the next day, and (3) the adjustor did not make any inquiries as to whether or not the plaintiff was on medication that might inhibit his understanding.[88] The Court explained,

> Presumably, had the Adjustor waited until their planned meeting [the next day], Webb, who is clearly unsophisticated in legal matters, would have had more time to recover from the trauma sustained in the accident, he would have been in his own environment, he would have been more comfortable sitting down during the discussion, and as a result, the discussion would probably been longer and more thorough.[89]

Thus, the Court was particularly troubled by the apparent urgency with which the release was executed, as evidenced by the fact that the adjustor chose to approach the plaintiff to sign the release when she ran into him at the salvage yard instead of waiting until their scheduled meeting the next day.[90] For these reasons, the Court concluded there was a factual question as to whether the insurance adjustor had exploited the circumstances to pressure the plaintiff into signing the release.[91]

Patrick's case is distinguishable from *Webb.* The May 25 meeting with Saunders was a scheduled, formal meeting in Patrick's own home. The meeting lasted over an hour, rather than the fifteen-minute impromptu meeting in *Webb*, which occurred at a salvage

[88] *Webb*, 2002 WL 388121 at *5.
[89] *Id.*
[90] *Id.* at *6.
[91] *Id.*

yard where the plaintiff stood in pain.[92] Further, it appeared to the Court that the insurance adjustor in *Webb* may have intentionally tried to rush or pressure the plaintiff.[93] Unlike the plaintiff in *Webb*, who signed the release within fifteen minutes of it being presented, Patrick was provided with over an hour to review the Release and Addendum, and asked no questions prior to signing both. Patrick concedes he was not "fast talked" like the plaintiff in *Webb*.[94] As the Court in *Webb* contemplated, "[because] the Adjustor waited until their planned meeting, [Patrick], who is clearly unsophisticated in legal matters, . . . had more time to recover from the trauma sustained in the accident, [was] in his own environment, [was] more comfortable sitting down during the discussion, and as a result, the discussion [was] longer and more thorough.[95] Thus, many of key facts that concerned the Court in *Webb*, which precluded summary judgment, are not present in the case *sub judice*.

The Court concludes that Patrick has failed to carry his burden and has not established that there is a genuine issue of fact that would support this Court concluding that he was subjected to duress or coercion. As stated above, duress and coercion are not distinctive and both require that the plaintiff—here, Patrick—be subjected to some "wrongful act" that "overcomes the will of the person."[96] Even viewing the facts in the light most favorable to him, Patrick has failed to establish that Saunders, or anyone else, subjected him to a "wrongful act" that overcame his will. The May 25 meeting was not a surprise, because it was scheduled in advance, and Patrick was able to sit in the comfort of his own home. Saunders testified that Patrick had ample time to read the Settlement

[92] *Id*. at *2.
[93] *Id*.
[94] Pl.'s Reply to Def.'s Mot. for Summ. J. at 4.
[95] *Webb*, 2002 WL 388121 at *5.
[96] *Way Rd. Dev. Co. v. Snavely*, 1992 WL 19969, at *3 (Del. Super. Ct. Jan. 31, 1992).

Documents and to ask questions and that she made clear to him that the Release was releasing all of the named parties from any further liability.[97] Finally, Patrick's contention that Saunders created a false impression by presenting him with a medical release request, causing him to believe his case was not over, is of no moment, because had Patrick read the Settlement Documents prior to signing, he would have known that his claim against the released defendants was completed.[98]

Like Patrick's claim of duress and coercion, Patrick has failed to demonstrate there is a genuine issue of material fact that supports he was subjected to undue influence.[99] As stated above, Patrick's claim of undue influence is premised on (1) him being medicated at the time he signed the Settlement Documents, (2) that he is 64 years old, with limited education, (3) that Saunders is more experienced with insurance claims, and (4) that Saunders presented him with a medical release, which Patrick claims gave him the impression that his claim was not completed. Although Patrick was medicated at the time he met with Saunders, he had taken all but one of the eleven medications long before the May 25 meeting, because of his pre-existing disability.[100] Patrick testified that he is unsure whether the only new medication, an unidentified steroid, could have affected his judgment, stating it "might" and he is unsure, but made clear that the other medications, when identified specifically, did not affect his ability to think clearly.[101] Because Patrick fails to identify what medications he took that inhibited his ability to think clearly and

[97] Saunders Dep. (Apr. 23, 2013) at 28, 40-41.
[98] It is clear there is some language on the check itself that might also explain the nature of the Release. The copy provided to the Court is illegible, however, and no party has cited to the language.
[99] *A.I. v. A.I.*, 2007 WL 1518640, at *1 (Del. Fam. Ct. Mar. 8, 2007) (explaining the party asserting undue influence bears the burden of proof).
[100] Patrick Dep. at 15-18.
[101] *Id*. at 55-57. As stated above, Patrick refused to answer when asked whether the Fioricet prevented him from thinking clearly. *Id*. at 57.

prevented him from understanding the legal effect of the Settlement Documents, Patrick's claim that he was subjected to undue influence as a result of being medicated fails.

Patrick's claim that he was unduly influenced because he is an uneducated 64 year old without experience dealing with insurance companies, who met with Saunders, an individual who is more experienced than him with handling insurance matters, also must fail. The fact that Patrick is 64 years old does not, alone, constitute undue influence. Further, the fact that Patrick may be uneducated or inexperienced with insurance companies is of no moment. This Court, as well as many other courts, including the United States Court of Appeals for the Third Circuit, has explained "the fact that [the plaintiff] cannot read, write, speak, or understand the English language is immaterial to whether an English-language agreement the [plaintiff] executes is enforceable."[102] Thus, the fact that Patrick is less educated and unfamiliar with insurance transactions does not provide a basis for this Court to find the Settlement Documents were signed because of undue influence. Rather, as the law in Delaware makes clear, Patrick had an obligation to ensure that he understood the Release and Addendum prior to signing.[103] Patrick testified unequivocally that he did not read the Settlement Documents prior to signing, and instead merely scanned over them.[104] Patrick's decision to sign the Settlement Documents without fully comprehending their legal affect does not provide this Court with a basis to invalidate the Settlement Documents. Like with Patrick's duress and coercion claim, the fact that Saunders presented Patrick with a medical release request did not constitute undue influence, because had Patrick read the Settlement Documents prior to signing, which he

[102] *Bernal*, 2013 WL 1871756, at *3 (quoting *Morales v. Sun Constructors, Inc.*, 541 F.3d 218, 222 (3d Cir. 2008)).
[103] *Id*. at *3-*4.
[104] Patrick Dep. at 13.

clearly did not, he would have not have had the mistaken impression that he could still maintain a lawsuit against the released parties.

C. Fraud

Patrick's claim that Saunders committed fraud against him by allowing him to sign the Release that indicated he had consulted with counsel even though Saunders was unsure whether Patrick had done so must fail.[105] Assuming that Saunders misrepresented the contents or affect of the Settlement Documents to Patrick, the documents would not be invalidated so long as they were clear, unambiguous, and Patrick was provided with an adequate opportunity to examine them prior to signing.[106] As stated above, the Release clearly and unambiguously releases Defendants from the claims asserted in Patrick's Complaint.[107] The Court also finds that, because Patrick had over an hour to review and sign the Settlement Documents and asked no questions while doing so, he was provided with ample opportunity to review the documents prior to signing.[108]

In *Hicks v. Soroka*, the plaintiff argued that the release was invalid because the insurance agent falsely stated that he could still sue after the release was signed.[109] The plaintiff stated that he only had a seventh-grade education and did not read the release before signing.[110] The Court granted summary judgment for the defendant, finding no fraud.[111] The Court held that so long as the plaintiff had the opportunity to read the release himself, he is responsible for its contents regardless of any representations made by a

[105]Pl.'s Reply to Def.'s Mot. for Summ. J. (June 25, 2013) at 3.
[106] *Bernal v. Feliciano*, 2013 WL 1871756, at *4 (Del. Super. Ct. May 1, 2013).
[107] Def. Ellis' Mot. for Summ. J., Ex. 1.
[108] Saunders Dep. at 43.
[109] *Hicks v. Soroka*, 188 A.2d 133, 139 (Del. Super. Ct. 1963).
[110] *Id.* at 137, 139.
[111] *Id*. at 134, 139.

releasee or its agent.[112] Therefore, even if we assume for the sake of argument that Saunders allowed or encouraged Patrick to have a false impression of the release's effects, this will not invalidate the Release.

Patrick attempts to distinguish his case from *Hicks* on the grounds that the release in *Hicks* was witnessed by the plaintiff's sister, whereas Patrick's Release was neither witnessed nor notarized.[113] Patrick cites no case law, and this Court knows of none, that supports the proposition that a general release must be witnessed or notarized, or that the presence of a witness affects the duty of the signer to read and understand the release agreement. The Court in *Hicks* never suggests that the release would have been invalid had it not been witnessed. Similarly, the general release in *Webb* was neither witnessed nor notarized, even though there were signature lines provided for both.[114] Although the Court in *Webb* noted the absence of signatures, the Court did not suggest that the lack of witnesses or failure to have the document notarized makes any difference to the validity of the release agreement.[115]

Patrick's fraud claim also must fail based on this Court's decision in *Bernal v. Feliciano*. In *Bernal*, this Court concluded that a plaintiff cannot avoid a release that clearly releases all claims, even assuming a misrepresentation was made, so long as the plaintiff had the opportunity to review the release prior to signing, because "the clear language of the release would have alerted Plaintiff of its contents."[116] The plaintiff in *Bernal*, who could not read or speak English, signed a general release and later sought to avoid the release, claiming she relied on an insurance adjuster's misrepresentation that the

[112] *Id*. at 139.
[113] Pl.'s Reply to Def.'s Mot. for Summ. J. (June 25, 2013) at 2.
[114] *Webb*, 2002 WL 388121 at *2.
[115] *Id.*
[116] *Bernal v. Feliciano*, 2013 WL 1871756, at *4 (Del. Super. Ct. May 1, 2013).

release only covered lost wages.[117] This Court found that the plaintiff's claim was similar to that in *Hicks*, stating "[l]ike *Hicks*, the Plaintiff cannot rely on a misrepresentation that [the insurance adjuster] allegedly made when the release clearly states that it was for all claims."[118] Thus, even if Saunders misrepresented facts to Patrick, this would be insufficient to invalidate the release. As a result, the fact that Saunders was unsure whether Patrick had consulted with legal counsel prior to signing the Settlement Documents, which does not rise to the level of a misrepresentation, does not provide a basis to invalidate the Settlement Documents.

Patrick attempts to distinguish *Bernal*, because in that case the general release at issue was only one page, rather than the Settlement Documents in the case *sub judice*, which total six pages, only four of which have substantive language, *i.e.* two of the six pages only contain signature lines. Although Patrick is correct that the Settlement Documents in the present case are longer than the release at issue in *Bernal*, the relevant language of the Release quoted above, which closely follows the language of the release in *Bernal*,[119] appears at the top of the first page of the Release.[120] Thus, the language that releases Defendants from future liability is the first thing that Patrick would have read, had he chosen to do so. Irrespective of the length of a release, Delaware law is clear that the releasee—here, Patrick—has the obligation to read and understand the release prior to signing. As stated above, this Court, as well as others, has concluded that a release is binding on a party who did not speak, read, or understand the English language. Patrick's

[117] *Id*.
[118] *Id*.
[119] *Id*. at *1.
[120] Def. Ellis' Mot. for Summ. J., Ex. 1.

claim that the Settlement Documents are longer than the release in *Bernal* is unavailing, because Patrick had a duty to read and understand the documents prior to signing.

VI. CONCLUSION

For the reasons stated above, this Court concludes there is no genuine issue of material fact that the Settlement Documents release Defendants from the claims asserted in Patrick's Complaint and Patrick has failed to demonstrate there is a material issue of fact, if resolved, would support this Court concluding he signed the Settlement Documents as a result of duress, coercion, undue influence or fraud. Accordingly, Defendants' Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.

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M. Jane Brady
Superior Court Judge