

GOL § 15-108: New York Court of Appeals Adopts Aggregation Method in Crediting Settlements to Verdicts Assessed Against Non-Settling Defendants

Bianca Scaramellino

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

GENERAL OBLIGATIONS LAW

GOL § 15-108: New York Court of Appeals adopts aggregation method in crediting settlements to verdicts assessed against non-settling defendants

GOL section 15-108(a) provides that when a plaintiff negotiates a settlement with one of several defendants, the plaintiff's recovery against the remaining defendants is reduced by the greater of the amount paid in settlement, the amount stated in release, or the settling party's equitable share of fault as apportioned by the jury.¹ Although the statute prescribes a method for

¹ GOL § 15-108(a) (McKinney 1989). Section 15-108 provides:

(a) Effect of release of or covenant not to sue tortfeasors. When a release or a covenant not to sue or not to enforce a judgment is given to one of two or more persons liable or claimed to be liable in tort for the same injury, or the same wrongful death, it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms expressly so provide, but it reduces the claim of the releasor against the other tortfeasors to the extent of any amount stipulated [sic] by the release or the covenant, or in the amount of the consideration paid for it, or in the amount of the released tortfeasor's equitable share of the damages under article fourteen of the civil practice law and rules, whichever is the greatest.

(b) Release of tortfeasor. A release given in good faith by the injured person to one tortfeasor as provided in subdivision (a) relieves him from liability to any other person for contribution as provided in article fourteen of the civil practice law and rules.

(c) Waiver of contribution. A tortfeasor who has obtained his own release from liability shall not be entitled to contribution from any other person.

Id.

Prior to the enactment of § 15-108, the release of one defendant discharged all others. Joseph Kelner & Robert S. Kelner, *Unsettling Settlement Statute—G.O.L. 15-108*, N.Y. L.J., July 10, 1985, at 1, col. 1. In 1972, New York enacted § 15-108, thereby allowing plaintiffs to settle with one defendant without forfeiting their rights against any remaining defendants. *Id.*

The 1974 amendment was an attempt to counteract some of the effects of *Dole v. Dow Chem. Co.*, 30 N.Y.2d 143, 282 N.E.2d 288, 331 N.Y.S.2d 382 (1972). *Id.*; see *In re Joint E. & S. Dist. Asbestos Litig.*, 971 F.2d 831, 842 (2d Cir. 1992); *Williams v. Niske*, 81 N.Y.2d 437, 442-43, 615 N.E.2d 1003, 1006, 599 N.Y.S.2d 519, 522 (1993); Governor's Memorandum (N.Y.S. 7935A, N.Y.A. 9192A), reprinted in [1974] N.Y. LEGIS. ANN. 15, 17 [hereinafter Governor's Memorandum]. Prior to *Dole*, a defendant who settled was freed from any further liability claims by the plaintiff and by the remaining defendants. Samuel L. Green, *General Obligations Law Section 15-108: An Unsettling Law*, 55 N.Y. Sr. B.J. 28, 28 (1983). In *Dole*, the Court of Appeals held that when only one of two tortfeasors is sued, the defendant can implead the other tortfeasor for an equitable apportionment of liability. *Dole*, 30 N.Y.2d at 148-49, 282 N.E.2d at 292, 331 N.Y.S.2d at 387. Courts later interpreted *Dole* to mean that a nonsettling defend-

calculating this type of verdict offset when one tortfeasor settles, it does not provide a means of calculating the offset when several defendants settle.² Consequently, the courts have been forced to interpret the statute in these situations.³ Initially, some courts required that the offset be calculated on a defendant-by-defendant basis; that is, by considering each settling tortfeasor individually and crediting the nonsettling defendant with the greater of the amount of settlement or the percentage of liability allocated to that tortfeasor by the jury.⁴ Recently, however, in *Didner v. Keene*

ant could cross-claim for contribution from a settling defendant. *See* *Mead v. Bloom*, 62 N.Y.2d 788, 792-93, 465 N.E.2d 1262, 1264, 477 N.Y.S.2d 326, 328 (1984); *see, e.g.*, *Blass v. Hennessey*, 44 A.D.2d 405, 407, 355 N.Y.S.2d 506, 508 (4th Dep't 1974) (holding that defendant's settlement with plaintiffs did not preclude his further liability to nonsettling defendant). To eliminate this disincentive to settle, the New York Legislature amended § 15-108 by adding subdivision (b), which prohibits a nonsettling defendant from seeking contribution from one who has settled. GOL § 15-108(b) (McKinney 1989); *Williams*, 81 N.Y.2d at 442-43, 615 N.E.2d at 1006, 599 N.Y.S.2d at 522; Governor's Memorandum, *supra*.

As a quid pro quo, the legislature also added subdivision (c), which prohibits the settling defendant from seeking contribution from the nonsettling defendant. GOL § 15-108(c) (McKinney 1989); *Gonzales v. Armac Indus.*, 81 N.Y.2d 1, 5, 611 N.E.2d 261, 263, 595 N.Y.S.2d 360, 362 (1993) ("The settling tortfeasor is relieved from liability to any other person for contribution but, in exchange, is not entitled to obtain contribution from any other tortfeasor."). As a result, if the amount paid in settlement exceeds the settling defendant's proportionate share of fault, the "benefit inures to the remaining wrongdoers who are credited with the amount paid by the settlor." Governor's Memorandum, *supra*.

² *In re New York City Asbestos Litig.*, 188 A.D.2d 214, 217-18, 593 N.Y.S.2d 43, 46 (1st Dep't), *aff'd*, 82 N.Y.2d 342, 624 N.E.2d 979, 604 N.Y.S.2d 884 (1993); *Williams v. Niske*, 181 A.D.2d 307, 312, 586 N.Y.S.2d 942, 945 (1st Dep't 1992), *aff'd*, 81 N.Y.2d 437, 615 N.E.2d 1003, 599 N.Y.S.2d 519 (1993).

In 1974, the legislature did not foresee the era of mass tort litigation and thus did not contemplate the application of § 15-108 to situations where several defendants negotiated settlements. *See In re Eastern and S. Dists. Asbestos Litig.*, 772 F. Supp. 1380 (E. & S.D.N.Y. 1991), *aff'd in part, rev'd in part*, 971 F.2d 831 (2d Cir. 1992).

³ *New York City Asbestos Litig.*, 188 A.D. at 218, 593 N.Y.S.2d at 46.

⁴ *See, e.g., In re Joint S. & E. Dist. Asbestos Litig.*, 760 F. Supp. 33 (E.D.N.Y. 1991); *Williams*, 181 A.D.2d at 312, 586 N.Y.S.2d at 946; *Killeen v. Reinhardt*, 71 A.D.2d 851, 419 N.Y.S.2d 175 (2d Dep't 1979); *In re New York City Asbestos Litig.*, 151 Misc.2d 1, 572 N.Y.S.2d 1006 (Sup. Ct. N.Y. County 1991), *aff'd in part and rev'd in part*, 188 A.D.2d 214, 593 N.Y.S.2d 43 (1st Dep't), *aff'd* 82 N.Y.2d 342, 624 N.E.2d 979, 604 N.Y.S.2d 884 (1993); *see also Eastern and S. Dists. Asbestos Litig.*, 772 F. Supp. at 1397 (following precedent of lower state courts, but recognizing that aggregation approach better serves objectives of statute).

It should be noted that in *Williams*, the First Department held that calculating the reduction on a defendant-by-defendant basis was proper when the jury had not apportioned fault among the settling defendants. 181 A.D.2d at 310, 586 N.Y.S.2d at 945. The court stated, however, that an aggregation approach might be more appropriate in cases where the jury had allocated liability among the settling defendants. *Id.* at 312, 586 N.Y.S.2d at 946.

Corp. (*In re New York City Asbestos Litigation*),⁵ the Court of Appeals rejected this method.⁶ The court chose instead to adopt an aggregate approach under which the jury verdict is reduced by the greater of the total amount paid in settlements or the total share of liability allocated by the jury to the settling defendants.⁷

To illustrate the different outcomes under the two methods, assume a \$100,000 jury verdict against three defendants, two of whom have settled for \$40,000 and \$10,000, respectively. Further assume that the jury finds the nonsettling defendant 60% liable and apportions fault between the two settling defendants as follows:

Settling Defendant	% of Fault	\$ Value of Fault	Amount of Settlement
A	10%	\$10,000	\$40,000
B	30%	\$30,000	\$10,000
TOTAL	40%	\$40,000	\$50,000

Under the aggregation method, the verdict is offset by the greater of the total dollar value of fault (\$40,000) or the total amount of the settlements (\$50,000).⁸ Thus, although the nonsettling defendant's share of liability is 60%, he is only responsible for \$50,000 in damages. Nevertheless, the plaintiff recovers the full amount of the verdict.⁹

⁵ 82 N.Y.2d 342, 624 N.E.2d 979, 604 N.Y.S.2d 884 (1993).

⁶ *Id.* at 351, 624 N.E.2d at 984, 604 N.Y.S.2d at 889.

⁷ *Id.*

⁸ Daniel Wise, *Guidance on Splitting Tort Awards Offered*, N.Y. L.J. 1 (1993).

⁹ It should be noted, however, that the aggregation approach does not always result in full recovery for a plaintiff. *In re New York City Asbestos Litig.*, 188 A.D.2d 214, 222-23, 593 N.Y.S.2d 43, 49 (1st Dep't), *aff'd*, 82 N.Y.2d 821, 625 N.E.2d 588, 605 N.Y.S.2d 3 (1993). Where the combined shares of liability of the settling defendants exceed the total amounts paid in settlement, the plaintiff will remain undercompensated. *Id.* at 223, 593 N.Y.S.2d at 49.

For example, suppose a jury returns a verdict of \$100,000 against three defendants. Two of them have entered into settlements with the plaintiff in the amounts of \$10,000 and \$20,000, respectively. Further suppose the jury finds the nonsettling defendant 50% liable and apportions fault among the settling defendants as follows:

Settling Defendant	% of Fault	\$ Value of Fault	Amount of Settlement
A	40%	\$40,000	\$10,000
B	10%	\$10,000	\$20,000
TOTAL	50%	\$50,000	\$30,000

If the offset is calculated on a defendant-by-defendant basis,¹⁰ the results are quite different.¹¹

Settling Defendant	% Of Fault	\$ Value of Fault	Amount of Settlement	Amount of Offset
A	10%	\$10,000	\$40,000	\$40,000
B	30%	\$30,000	\$10,000	\$30,000
TOTAL	40%	\$40,000	\$50,000	\$70,000

When each defendant is considered separately, the nonsettling defendant receives a \$40,000 credit to the verdict from plaintiff's settlement with defendant A and a \$30,000 offset from the settlement with defendant B. Thus, the nonsettling defendant remains liable for only \$30,000, although his proportional liability was \$60,000. Thus, the plaintiff is undercompensated by \$20,000, receiving \$80,000 out of a total verdict of \$100,000.

Under the aggregation method, since the total value of fault (\$50,000) exceeds the total amount paid in settlements (\$30,000), the verdict assessed against the nonsettling defendant is reduced by \$50,000. The nonsettling defendant is thus liable for \$50,000. The plaintiff, however, is undercompensated by \$20,000, receiving \$80,000 out of a \$100,000 verdict (\$30,000 from the settlement plus \$50,000 from the nonsettling defendant).

¹⁰ This approach has also been referred to as the case-by-case method or the pick and choose method. See Gary Spencer, *Method Defined to Reduce Verdicts; 'Aggregation' Adopted as Means to Account for Settling Defendants*, N.Y. L.J. 1 (1993); see also *New York City Asbestos Litig.*, 82 N.Y.2d at 351, 624 N.E.2d at 984, 604 N.Y.S.2d at 889.

¹¹ See *In re Joint E. & S. Dists. Asbestos Litig.*, 971 F.2d 831, 850 (2d Cir. 1992) (explaining that choice of calculation method may greatly affect amount of credit).

It should be noted, however, that there may be circumstances in which both methods yield the same results. This occurs when the plaintiff negotiates either all favorable or, alternatively, all unfavorable settlements. To illustrate, assume a jury verdict of \$500,000 against four defendants, three of whom have settled with the plaintiff in the amounts shown below. Further assume that the nonsettling defendant is held 40% liable and that the jury apportions fault among the settling defendants as follows:

Settling Defendant	% of Fault	\$ Value of Fault	Amount of Settlement	Amount of Offset
A	10%	\$ 50,000	\$100,000	\$100,000
B	20%	\$100,000	\$150,000	\$150,000
C	30%	\$150,000	\$200,000	\$200,000
TOTAL	60%	\$300,000	\$450,000	\$450,000

Under these facts, whether the offset is calculated in the aggregate or on an individual defendant basis, the credit to the nonsettling defendant is \$450,000.

In *Didner v. Keene Corp.*, the plaintiff brought an action against several defendants to recover damages for the wrongful death of her husband, who died of exposure to asbestos.¹² After the plaintiff had negotiated settlements with several defendants and obtained a verdict in her favor,¹³ defendant Keene Corporation argued that, since the statute speaks in the singular, the verdict reduction should be calculated on a defendant-by-defendant basis—subtracting for each settling defendant the greater of the amount paid in settlement or the equitable share of liability attributable to that defendant.¹⁴ This approach would have reduced Keene's damages to zero, despite the jury's determination that it was responsible for 15% of the total liability.¹⁵ The Appellate Division, First Department, in dictum, stated that the aggregation method was a better approach to calculating the nonsettling defendant's liability in light of the legislature's goals.¹⁶ The Court of Appeals granted the defendant leave to appeal in order to resolve this issue.¹⁷

Writing for a unanimous court, Judge Hancock opined that the aggregation approach is preferable since it promotes the statutory goals¹⁸ of encouraging settlements¹⁹ and ensuring that nonsettling defendants are not held liable for more than their equita-

¹² 188 A.D.2d 15, 17, 593 N.Y.S.2d 238, 240 (1st Dep't), *aff'd*, 82 N.Y.2d 342, 624 N.E.2d 979, 604 N.Y.S.2d 884 (1993).

¹³ *Id.*

¹⁴ *Id.* at 24, 593 N.Y.S.2d at 244. This argument was also posed by the defendants in the Brooklyn Naval Shipyard Cases (*In re New York City Asbestos Litigation*), 188 A.D.2d 214, 217, 593 N.Y.S.2d 43, 45 (1st Dep't), *aff'd*, 82 N.Y.2d 821, 625 N.E.2d 588, 605 N.Y.S.2d 3 (1993). The Appellate Division rejected the argument, asserting that use of the word "tortfeasor" in the statute was not "an expression of legislative intent," but was simply an attempt at grammatical conformity with the statutory language addressing settlement with only "one of two or more persons liable." *Id.* at 223, 593 N.Y.S.2d at 49. Since enactment of § 15-108 preceded the litigation of mass tort claims, it is unlikely that the legislature contemplated the application of the statute where the plaintiff reached settlements with several defendants. *In re Eastern & S. Dists. Asbestos Litig.*, 772 F. Supp. 1380, 1394 (E. & S.D.N.Y. 1991).

¹⁵ *Didner*, 188 A.D.2d at 18, 593 N.Y.S.2d at 240.

¹⁶ *Id.* at 25, 593 N.Y.S.2d at 245.

¹⁷ 82 N.Y.2d 342, 624 N.E.2d 979, 604 N.Y.S.2d 884 (1993). On the same day, the Court of Appeals decided two other cases presenting the same issue. *See In re New York City Asbestos Litig.*, 82 N.Y.2d 821, 625 N.E.2d 588, 605 N.Y.S.2d 3 (1993); *Policina v. Misericordia Hosp. Medical Ctr.*, 82 N.Y.2d 332, 624 N.E.2d 332, 624 N.E.2d 974, 604 N.Y.S.2d 879 (1993).

¹⁸ *Didner*, 82 N.Y.2d at 351, 624 N.E.2d 984, 604 N.Y.S.2d 889.

¹⁹ *Id.*; *see* GOL § 15-108 commentary at 700 (McKinney 1989); *see also* *Rock v. Reed-Prentice Div. of Package Mach. Co.*, 39 N.Y.2d 34, 40-41, 346 N.E.2d 520, 524, 382 N.Y.S.2d 720, 723 (1976); *Lambert v. HRH Equity Corp.*, 117 A.D.2d 227, 232-33,

ble share of damages.²⁰ In addition, the court maintained that the aggregation method "avoids the potential injustice" that can result under the defendant-by-defendant method, that is, "that a nonsettling defendant will be permitted to take advantage of the settlements . . . so as to reduce the amount that it pays below its equitable share by cutting the compensation the jury has awarded to plaintiff."²¹ In doing so, the court rejected the defendant's argument that the statute's use of singular language requires the offset to be calculated by considering each defendant individually.²²

It is submitted that the Court of Appeals was correct in choosing the aggregation method for calculating nonsettling defendants' damages. In enacting section 15-108, the legislature did not intend to provide a nonsettling defendant with a windfall while undercompensating the plaintiff.²³ Nevertheless, this type of inequity frequently results when the offsetting credit is calculated on a defendant-by-defendant basis.²⁴ Although both methods may sometimes yield the same outcome,²⁵ in most instances the aggregation method decreases the potential benefit to nonsettling defendants that might otherwise result under the defendant-by-defendant approach.²⁶ The court's decision reflects an attempt to discourage defendants from proceeding to trial under the errone-

502 N.Y.S.2d 433, 436 (1st Dep't 1986); Governor's Memorandum, *supra* note 1, at 17; Kelner & Kelner, *supra* note 1, at 1, col.1.

²⁰ *Didner*, 82 N.Y.2d at 351, 624 N.E.2d at 984, 604 N.Y.S.2d at 889; see GOL § 15-108 n.1 (McKinney 1989); *Williams v. Niske*, 181 A.D.2d 307, 309-10, 586 N.Y.S.2d 942, 944 (1st Dep't 1992), *aff'd*, 81 N.Y.2d 437, 615 N.E.2d 1003, 599 N.Y.S.2d 519 (1993); *Lambert*, 117 A.D.2d at 232-33, 502 N.Y.S.2d at 436; Governor's Memorandum, *supra* note 1, at 17.

The second goal of the statute is not an issue in the courts' interpretation of § 15-108 since either method of calculation will ensure that a nonsettling defendant is not held liable beyond his equitable share of fault. See *supra* example in text accompanying notes 7-12.

²¹ *Didner*, 82 N.Y.2d at 351, 624 N.E.2d at 984, 604 N.Y.S.2d at 889.

²² *Id.* The court stated that the statute provides absolutely no guidance as to how it should be applied when a plaintiff settles with more than one defendant. *Id.*

²³ *In re Eastern and S. Dists. Asbestos Litig.*, 772 F. Supp. 1380, 1396 (E. & S.D.N.Y. 1991).

²⁴ *In re Joint E. & S. Dists. Asbestos Litig.*, 971 F.2d 831, 850 (2d Cir. 1992) (noting that calculation on individual defendant basis tends to diminish plaintiff's recovery and reduce nonsettling defendant's share of liability).

²⁵ See *supra* note 11 (providing illustration of how both methods can create same result).

²⁶ See *Spencer*, *supra* note 10, at 1 (stating that calculating offset on defendant-by-defendant basis tends to increase reduction to nonsettling defendant's damages); see, e.g., *supra* notes 8-12 and accompanying text (illustrating effects of two methods).

ous assumption that by refusing to settle they can greatly reduce their ultimate liability.²⁷

It is asserted, however, that while adopting the most favorable approach to section 15-108, the Court of Appeals failed to acknowledge a fundamental flaw in the statute. Although section 15-108 was enacted to encourage settlements,²⁸ its application, even when a single tortfeasor settles, has often protected or even benefitted nonsettling defendants.²⁹ If the plaintiff negotiates an unfavorable settlement, the award is reduced by the settling defendant's equitable share of fault as apportioned by the trier of fact,³⁰ and the nonsettling defendant is liable to the extent that he is at fault.³¹ However, if the plaintiff negotiates a favorable settlement, nonsettling defendants may deduct the amount of the settlement from the verdict, thereby potentially reducing their liability below their share of fault.³² By placing the

²⁷ See *In re New York City Asbestos Litig.*, 188 A.D.2d 214, 218, 593 N.Y.S.2d 43, 46 (1st Dep't), *aff'd*, 82 N.Y.2d 342, 624 N.E.2d 979, 604 N.Y.S.2d 884 (1993).

²⁸ *General Obligations Law Aggregation of Settlements*, N.Y. L.J. 21; see *supra* note 20.

²⁹ Perry A. Carbone, Comment, *Repealing New York's Post-Settlement Equitable Share Reduction Scheme: An Idea Whose Time Has Come*, 49 ALB. L. REV. 856, 882 (1985) (arguing that "section 15-108 serves to protect interests of nonsettling defendants instead of providing satisfactory framework for dispute resolution"); *Court of Appeals Offers Its First Major Decision on How Damages Are to be Adjusted Under the Tort Settlement Statute When There Are Multiple Defendants*, N.Y. ST. L. DIG., Sept. 1993, at 2 (stating that § 15-108(a) often results in "overindulgence" of nonsettling defendant); see also Kelner & Kelner, *supra* note 1, at 16 (asserting that difficulty with statute is "whichever is the greatest" language).

Subdivision (c) of § 15-108 also creates a disincentive to settlement by prohibiting a settling defendant from seeking contribution if he overestimates his liability and pays more in settlement than his equitable share of the damages. Green, *supra* note 1, at 29.

³⁰ *Id.* The difference between the credited share of fault and the amount paid in settlement is the plaintiff's loss. *Id.*

³¹ *Id.* For example, suppose a plaintiff wins a \$50,000 jury verdict, with 20% of the liability allocated to defendant A and 80% to defendant B. *Id.* Further suppose that the plaintiff had previously settled with defendant B for \$10,000. *Id.* Applying § 15-108, the verdict is reduced by \$40,000 (80% of \$50,000) so that the nonsettling defendant is responsible for \$10,000, his equitable share of damages. *Id.* Under these facts, the plaintiff only receives \$20,000 from a total verdict of \$50,000. *Id.*

³² *Id.*; Carbone, *supra* note 29, at 878 n.100. For example, assume a \$50,000 jury verdict with 80% of the liability allocated to defendant A and 20% to defendant B. Green, *supra* note 1, at 29. If B settles for \$25,000, the \$50,000 award is reduced by that amount, and A pays only \$25,000 in damages, despite being found liable for \$40,000 (80% of \$50,000). Green, *supra* note 1, at 29. Section 15-108 was structured in this way to ensure that a plaintiff would not receive excessive compensation for his injuries. *In re Eastern & S. Dists. Asbestos Litig.*, 772 F. Supp. 1380, 1392 (E. & S.D.N.Y. 1991), *aff'd in part, rev'd in part*, 971 F.2d 831 (2d Cir. 1992).

nonsettling defendant in a no-lose situation, section 15-108 creates a disincentive to settle and thus fails its essential purpose.

Although the New York Legislature enacted section 15-108 to encourage settlements,³³ the statute, by protecting nonsettling defendants, has failed to consistently achieve this result.³⁴ By adopting the aggregation method, the Court of Appeals has mitigated some of the undesirable effects of the statute. Although the court's effort is commendable, it must be recognized that the real solution lies in the legislative re-examination and revision of the statute.³⁵ One possible solution, advocated by many critics of this statute, is the repeal of subsection (c). A repeal of subsection (c) would allow settling defendants who have overestimated their liability to seek contribution from litigating defendants after liability has been allocated by a jury.³⁶ This legislative action would continue to foster settlements while perhaps achieving a more equitable outcome for settling defendants.

Bianca Scaramellino

³³ See *supra* notes 19, 28 and accompanying text.

³⁴ Green, *supra* note 1, at 31.

³⁵ Green, *supra* note 1, at 31. "Because GOL 15-108 does not adequately balance the goal of equitable loss sharing among tortfeasors with the goal of encouraging settlements, it is in need of revision." *Id.*; see Carbone, *supra* note 29, at 877 (proposing amendment to statute); Kelner & Kelner, *supra* note 1, at 16 (illustrating structural inadequacies in statute).

Some critics of the statute have argued that subdivision (c), which requires a settling defendant to surrender any rights of contribution, renders § 15-108 self-defeating in its goal of encouraging settlements. As the Honorable Joseph M. McLaughlin has commented, "[subdivision (c)] strikes the writer as a questionable legislative judgment. If the amount of A's settlement with P exceeds his equitable share of damages, why should he not have the right to turn to B for contribution?" GOL § 15-108 commentary at 702 (McKinney 1989).

³⁶ Carbone, *supra* note 29, at 884; Green, *supra* note 1, at 30. Such a repeal "would encourage partial settlements and promote the primary policy of assuring equity among wrongdoers which governs the resolution of all multiparty litigation." Green, *supra* note 1, at 30.