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GOL § 15-108: Judgment Against Defendant Is Reduced by the Equitable Share of the Damages Attributable to the Defendant Who Settled When That Settling Defendant Is a Vicariously Liable Employer

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congested with actions, whether meritorious or not, that have no real nexus to New York.[23] The result achieved by applying the balancing test, therefore, more effectively advanced the legislative objectives of the amended Rule 327 than does the amendment itself.[24]

The doctrine of forum non conveniens provides the courts with an effective tool for dismissing actions that are unduly burdensome and for which a more appropriate forum exists. In light of the significant restriction placed on the courts' discretion by the amendment to Rule 327, which appears superfluous in light of the traditional balancing approach, it is urged that the legislature reevaluate this legislation. Otherwise, the courts of this state will be compelled to entertain actions that may contravene the very purpose that the amendment sought to achieve.

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General Obligations Law

GOL § 15-108: Judgment against defendant is reduced by the equitable share of the damages attributable to the defendant who settled when that settling defendant is a vicariously liable employer

Section 15-108 of the General Obligations Law provides that a release given to one or more persons liable in tort for the same

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& Rubber Co., 13 App. Div. 2d 470, 470, 212 N.Y.S.2d 285, 286 (1st Dep't 1961); Regal Knitwear Co. v. M. Hoffman & Co., 96 Misc. 2d 605, 613, 409 N.Y.S.2d 483, 488 (Sup. Ct. N.Y. County 1978). Recognition of a "public duty" to protect the court system from unrelated actions has led the courts to make the motion *sua sponte*. *See, e.g., Regal Knitwear*, 96 Misc. 2d at 614, 409 N.Y.S.2d at 488; Wachsman v. Craftool Co., 77 Misc. 2d 360, 362, 353 N.Y.S.2d 78, 81 (Sup. Ct. N.Y. County 1973).

[23] *See supra* notes 10 & 23 and accompanying text.

[24] *Compare supra* note 8 and accompanying text (economic benefits offered by the amendment) *with supra* notes 12-17 and accompanying text (possibility of detrimental economic effect). While those parties with beneficial contacts to the forum should be confident that their actions will be entertained upon invoking a forum-selection clause, it is submitted that those attempting to use the judicial resources of New York without offering any benefit to the state should not be permitted to burden the courts.

injury does not discharge any non-settling tortfeasors from liability.[1] Rather, it reduces the plaintiff's potential recovery from the non-settling tortfeasors,[2] and prevents them from seeking contribution from the released tortfeasor.[3] Moreover, New York courts

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[1] Section 15-108 of the GOL 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 of 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 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.

GOL § 15-108 (McKinney 1978).

[2] *Id.* Prior to its amendment in 1974, § 15-108 provided that a release reduced the releasor's recovery against remaining tortfeasors by the amount in the release, or the consideration paid for it, whichever amount was greater. *See* GOL § 15-108 (McKinney 1970). Courts interpreting the 1972 version of § 15-108, *see* GOL, ch. 830, § 15-108, [1972] N.Y. Laws 3216, 3217 (amended, GOL, ch. 742, § 15-108, [1974] N.Y. Laws 1915, 1916), held that a released tortfeasor was not discharged from *contribution* liability to the remaining defendants. *See, e.g.*, Blass v. Hennessey, 44 App. Div. 2d 405, 406-07, 355 N.Y.S.2d 506, 507-08 (4th Dep't 1974) (non-settling tortfeasor has right of apportionment against settling tortfeasor); Williams v. Town of Niskayuna, 72 Misc. 2d 441, 442, 339 N.Y.S.2d 888, 889 (Sup. Ct. Schenectady County 1972) (release does not conclusively establish amount joint tortfeasor required to pay); Michelucci v. Bennett, 71 Misc. 2d 347, 348-49, 335 N.Y.S.2d 967, 969-70 (Sup. Ct. Washington County 1972) (settlement does not preclude action by non-settling defendant against settling defendants). This interpretation served as a disincentive to settle. *See* GOL § 15-108, commentary at 717-18 (McKinney 1978).

To encourage settlements and assure that no non-settling tortfeasor would be responsible for more than an equitable share of the damages, the 1972 version of GOL § 15-108 was amended. *See* TWENTIETH ANN. REP. N.Y. JUD. CONFERENCE 224-25 (1975) [hereinafter cited as TWENTIETH REP.].

GOL § 15-108(a) allows injured parties to settle their claims against one tortfeasor without forfeiting their rights against other wrongdoers. TWENTIETH REP., *supra*, at 225; *see* Franzek v. Calspan Corp., 78 App. Div. 2d 134, 138, 434 N.Y.S.2d 288, 290 (4th Dep't 1980); *see also* Rock v. Reed-Prentice Div., Package Mach. Co., 39 N.Y.2d 34, 41, 346 N.E.2d 520, 523-24, 382 N.Y.S.2d 720, 723 (1976) (statute allows plaintiff to settle with one defendant without discharging other tortfeasors); Plath v. Justus, 28 N.Y.2d 16, 22-23, 268 N.E.2d 117, 120, 319 N.Y.S.2d 433, 439 (1971) (injured party may settle with one tortfeasor while reserving rights against other tortfeasor).

[3] GOL § 15-108(b) (McKinney 1978); *see* Torres v. State, 67 App. Div. 2d 814, 814, 413 N.Y.S.2d 262, 263 (4th Dep't 1979) (mem.) (settling tortfeasor entitled to summary judgment dismissing counterclaim for contribution from other tortfeasor).

have consistently read GOL section 15-108 in conjunction with the contribution rights set forth in Article 14 of the CPLR,[4] and there-

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Early New York cases followed the contribution principles set forth in the English case of Merryweather v. Nixan, 101 Eng. Rep. 1337 (K.B. 1799). *See* Note, *The New Right of Relative Contribution:* Dole v. Dow Chemical Co., 37 ALB. L. REV. 154, 154 (1972). In *Merryweather*, the court proscribed a right of contribution between jointly and severally liable tortfeasors who committed intentional torts. 101 Eng. Rep. at 1341. While New York courts acknowledged the idea of dividing a burden equally among tortfeasors, they did not recognize the right of tortfeasors to seek recovery among themselves. Note, *supra*, at 154-55.

In 1928, the legislature modified the common-law rule by passing § 211-a of the Civil Practice Act. *See* CPA § 211-a (McKinney 1928); Farrel & Wilner, Dole v. Dow Chemical Co.: *A Leading Decision—But Where?*, 39 BROOKLYN L. REV. 330, 330 (1972). Section 211-a created a right to contribution among tortfeasors who had been joined in an action by the plaintiff only if one of several joint tortfeasors paid more than a pro rata share of a joint judgment. Farrell & Wilner, *supra*, at 330; *see also* SIEGEL § 174. Case law further defined contribution rights among tortfeasors by creating an "active-passive" qualification; if one tortfeasor could demonstrate that his conduct was "passive" in creating the injury while another tortfeasor's actions were "active," the "passive" wrongdoer was entitled to implead and seek full indemnification from the "active" tortfeasors. SIEGEL § 170. However, the "active-passive" dichotomy proved to be ambiguous and a hindrance in evaluating a tortfeasor's rights and obligations. *See id.*

Contribution rights were redefined in Dole v. Dow Chem. Co., 30 N.Y.2d 143, 282 N.E.2d 288, 331 N.Y.S.2d 382 (1972), in which the Court of Appeals rejected the active-passive standard and allowed a joint tortfeasor the right to seek contribution, *id.* at 148-49, 282 N.E.2d at 292, 331 N.Y.S.2d at 387. The Court held that fault is to be apportioned by a jury according to each tortfeasor's degree of culpability. *Id.* at 153, 282 N.E.2d at 295, 331 N.Y.S.2d at 391-92. For an extensive discussion of the ramifications of the *Dole* decision on multi-party liability, see SIEGEL § 171; Farrell & Wilmer, *supra*, at 333-49; Schwab, Dole v. Dow Chemical Co.: *A Preliminary Analysis*, 45 N.Y. ST. B.J. 144, 146-64 (1973); Wilner, Dole v. Dow Chemical Co.: *The Kaleidescopic Impact of a Leading Case*, 42 BROOKLYN L. REV. 457 (1976); 44 ALB. L. REV. 718, 721-24 (1980).

Article 14 of the CPLR codified the *Dole* decision and created a right of contribution for a tortfeasor whether or not the plaintiff has sued the other tortfeasors. *See* SIEGEL § 172, at 212; 44 ALB. L. REV. 719, 722 (1972).

[4] *See* Riviello v. Waldron, 47 N.Y.2d 297, 306, 391 N.E.2d 1278, 1283, 418 N.Y.S.2d 300, 305 (1979); Rock v. Reed-Prentice Div., Package Mach. Co., 39 N.Y.2d 34, 39-40, 346 N.E.2d 520, 523, 382 N.Y.S.2d 720, 722-23 (1976). CPLR Article 14 provides:

Section 1401. Claim for contribution

> Except as provided in section 15-108 of the general obligations law, two or more persons who are subject to liability for damages for the same personal injury, injury to property or wrongful death, may claim contribution among them whether or not an action has been brought or a judgment has been rendered against the person from whom contribution is sought.

Section 1402. Amount of contribution

> The amount of contribution to which a person is entitled shall be the excess paid by him over and above his equitable share of the judgment recovered by the injured party; but no person shall be required to contribute an amount greater than his equitable share. The equitable shares shall be determined in accordance with the relative culpability of each person liable for contribution.
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Section 1404. Rights of persons entitled to damages not affected; rights of indem-

fore have determined that it does not apply to indemnification claims.[5] Recently, in *Mead v. Bloom*,[6] the Court of Appeals affirmed an Appellate Division decision that clarified the relation-

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nity or subrogation preserved

(a) Nothing contained in this article shall impair the rights of any person entitled to damages under existing law.

(b) Nothing contained in this article shall impair the right of indemnity or subrogation under existing law.

CPLR 1401-1404 (McKinney 1978).

The current Article 14, entitled "Contribution," was enacted in 1974, *see* CPLR Art. 14, ch. 742, § 1, [1974] N.Y. Laws 1915, and repealed the former Article 14, "Actions Between Joint Tort-Feasors," *see* 2A WK&M § 1401.01, at 14-3 (1984). Incorporating the rule enunciated in *Dole*, CPLR 1402 allows a tortfeasor to recover in contribution the sum paid by him in excess of his apportioned share of damages. *See* CPLR 1402; *Survey*, 49 ST. JOHN'S L. REV. 184, 185 (1974); TWENTIETH REP., *supra* note 2, at 220. Moreover, § 1401, following *Dole*, allows a tortfeasor to seek contribution from another wrongdoer regardless of whether a joint judgment was entered against the wrongdoers. *See* CPLR 1401 (McKinney 1976); TWENTIETH REP., *supra* note 2, at 217. Previously, a joint judgment had to be entered against the tortfeasors as a condition to a contribution right. *See Dole*, 30 N.Y.2d at 153, 282 N.E.2d at 294-95, 331 N.Y.S.2d at 391-92; TWENTIETH REP., *supra* note 2, at 217.

[5] *See, e.g.*, Graphic Arts Mut.. Ins. Co. v. Bakers Mut. Ins. Co., 45 N.Y.2d 551, 558-59, 382 N.E.2d 1347, 1350, 410 N.Y.S.2d 571, 575 (1978) (*Dole* does not authorize apportionment of liability among primarily and vicariously liable tortfeasors); Kelly v. Diesel Constr. Div., 35 N.Y.2d 1, 6-7, 315 N.E.2d 751, 753-54, 358 N.Y.S.2d 685, 689 (1974) (contribution allowed against tortfeasors that are actually at fault, as distinguished from those that are vicariously liable); Rogers v. Dorchester Assocs., 32 N.Y.2d 553, 566, 300 N.E.2d 403, 410, 347 N.Y.S.2d 22, 32-33 (1973) (no contribution claims exist in case involving indemnification claim). The Court in *Dorchester* read *Dole* as leaving the principles of common-law indemnification intact. *See Dorchester*, 32 N.Y.2d at 565-66, 300 N.E.2d at 410, 347 N.Y.S.2d at 32. For a general discussion of common-law indemnification principles before the expansion of the "active-passive' rule, see Meriam & Thorton, *Indemnity between Tort-Feasors; An Evolving Doctrine in the New York Court of Appeals*, 25 N.Y.U. L. REV. 845 (1950). Indemnification is created by express or implied contract and usually involves a shifting of the entire loss from one tortfeasor to another. *See* McFall v. Compagnie Maritime Belge, 304 N.Y. 314, 328, 107 N.E. 463, 471 (1952); Greenstone, *Spreading the Loss - Indemnity, Contribution, Comparative Negligence and Subrogation*, 13 FORUM 266, 268 (1977); *The Survey*, 47 ST. JOHN'S L. REV. 185, 194 (1972). In some cases, the law imposes liability on a party who has committed no actual wrong, but who is held liable for an injury as a matter of social policy because he can spread the risk of the loss to society as a whole. *See* Mauro v. McCrindle, 70 App. Div. 2d 77, 82, 419 N.Y.S.2d 710, 713-14 (2d Dep't), *aff'd*, 52 N.Y.2d 719, 417 N.E.2d 567, 436 N.Y.S.2d 273 (1980); *see also* Leflar, *Contribution and Indemnity Between Tortfeasors*, 81 U. PA. L. REV. 130, 146-50 (1932).

Conversely, contribution, which is "the right of a wrongdoer, who has paid the injured person's damages, to make other wrongdoers contribute to what has been paid," SIEGEL § 169, arises when the liability "is shared among wrongdoers who are *in pari delicto*," GOL § 15-108, commentary at 719 (McKinney 1978). Although New York courts have retained the distinction between contribution and indemnification claims, one commentator has suggested that GOL § 15-108 could logically be applied to both concepts. *See* 44 ALB. L.J. 719, 728 (1980).

[6] 94 App. Div. 2d 423, 464 N.Y.S.2d 904 (4th Dep't 1983), *aff'd*, 62 N.Y.2d 788, 465 N.E.2d 1262, 477 N.Y.S.2d 326 (1984) (mem.).

ship between these statutes by holding that when a plaintiff releases an employer who is vicariously liable for the negligence of its employee, the non-settling tortfeasor is entitled to have the judgment reduced by the employer's "equitable share of the damages" pursuant to GOL section 15-108.[7]

In *Mead,* the plaintiff's automobile was struck by an automobile driven by Karen Bloom and owned by her father Maurice.[8] James Mead brought a personal injury action against the Blooms; Karen's employer, MCA Distribution Corp.; the manufacturer of the Blooms' automobile, General Motors; and the distributor that had repaired the brakes on the Blooms' car, Hallman-Adkins Chevrolet, Inc.[9] The claim asserted against General Motors was settled before trial.[10] Because Maurice Bloom and MCA were vicariously liable for Karen Bloom's negligence, the trial court instructed the jury to consider those three defendants as one unit when apportioning liability.[11] The court further instructed the jury that Hallman-Adkins was to be considered a separate unit for liability purposes.[12]

Before the jury rendered its verdict, MCA settled with the plaintiff for $40,000.[13] The jury then returned a verdict against all the defendants for $500,000 and found the comparative negligence of the Blooms and MCA, as one unit, to be 75%, and that of Hallman-Adkins to be 25%.[14]

In accordance with GOL section 15-108, Hallman-Adkins sought to reduce the amount of damages apportioned against it by

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[7] 62 N.Y.2d at 790, 465 N.E.2d at 1262, 477 N.Y.S.2d at 326-27, *aff'g* 94 App. Div. 2d 423, 464 N.Y.S.2d 904 (4th Dep't 1983).

[8] 94 App. Div. 2d at 424, 464 N.Y.S.2d at 905.

[9] *Id.* The plaintiff alleged that the accident occurred while Karen Bloom was working for MCA. *Id.* GM was brought into the suit under the theory that it manufactured and distributed the car with defective brakes. *Id.* The plaintiff alleged that Hallman-Adkins had negligently repaired the brakes on the Bloom's car. *Id.* Hallman-Adkins cross-claimed against the Blooms and MCA for contribution. *Id.*

[10] *Id.* GM settled with the plaintiff before trial for $12,500. *Id.*

[11] *Id.* at 425, 464 N.Y.S.2d at 906. Of the defendants that went to trial, theories of fault were pleaded only against Karen Bloom, for negligent operation of the car, and Hallman-Adkins, for negligent repair of the car. *See id.* at 424-25, 464 N.Y.S.2d at 905-06. Liability was sought to be imposed upon Maurice Bloom as owner of the car, and upon MCA as Karen's employer. *See id.; see also infra* note 31 & accompanying text.

[12] 94 App. Div. 2d at 424, 464 N.Y.S.2d at 905.

[13] *Id.*

[14] *Id.* The parties agreed to reduce the $500,000 jury verdict by the amount of the GM settlement. *Id.*

75%, MCA's "equitable share" of the damages.[15] The trial court denied Hallman-Adkins' motion and reduced the verdict by only the amount of MCA's settlement.[16] The Appellate Division, Fourth Department, reversed.[17]

Justice Boomer, writing for a unanimous panel,[18] noted that GOL section 15-108 was to be read in conjunction with CPLR Article 14,[19] and construed the *Mead* case to involve contribution rights between tortfeasors MCA and Hallman-Adkins, and not an indemnification claim between MCA and Karen Bloom, which would have rendered GOL section 15-108 inapplicable.[20] Furthermore, the court held that Hallman-Adkins was entitled to contribution rights against MCA even though MCA was only vicariously liable for the tort of its employee,[21] noting that GOL section 15-108(a) affords relief to a party who has lost his contribution rights against a released tortfeasor.[22] Therefore, the court reasoned, since Mead released MCA from liability, and consequently deprived Hallman-Adkins of a right to contribution from MCA,[23] Mead's claim against Hallman-Adkins must be reduced by MCA's "equitable share of the damages."[24]

The Court of Appeals affirmed on the basis of Justice Boomer's opinion.[25] Judge Wachtler, however, in a forceful dissent,

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[15] *Id.*

[16] *Id.*

[17] *Id.* at 424-25, 464 N.Y.S.2d at 905.

[18] *Id.* at 426, 464 N.Y.S.2d at 906. Presiding Justice Dillon, and Justices Hancock, Doerr, and Moule joined in the opinion. *Id.*

[19] *Id.* at 425, 464 N.Y.S.2d at 905 (quoting Riviello v. Waldron, 47 N.Y.2d 297, 307, 391 N.E.2d 1278, 1284, 418 N.Y.S.2d 300, 305 (1975)).

[20] *See* 94 App. Div. 2d at 426, 464 N.Y.S.2d at 905. The *Mead* court noted that the indemnification claims are not applicable to GOL § 15-108. *Id.* at 425, 464 N.Y.S.2d at 905.

[21] *Id.* The court noted that GOL § 15-108(a) provides relief to a person who has lost his contribution rights against a released tortfeasor by reducing the injured party's judgment against the non-released tortfeasor by the releasee's equitable share of the damage, when that share is greater than the amount contained in the release or the amount paid for it. *Id.*; *see* GOL § 15-108(a).

[22] 94 App. Div. 2d at 425, 464 N.Y.S.2d at 905.

[23] *Id.*; *see* GOL § 15-108(b).

[24] 94 App. Div. 2d at 425, 464 N.Y.S.2d at 905. Because the court determined that the Blooms and MCA were one unit for contribution purposes, *id.*, 464 N.Y.S.2d at 906, and because the court concluded that MCA and the Blooms were jointly and severally liable for their percentage of the judgment, *id.*, Justice Boomer reasoned that Hallman-Adkins would have been entitled to seek 75% of the judgment in contribution from MCA, *id.* at 425-26, 464 N.Y.S.2d at 906. Therefore, using the jury determination of apportionment of fault, MCA's "equitable share" of the damages was 75%. *Id.* at 426, 464 N.Y.S.2d at 906.

[25] 62 N.Y.2d 788, 790, 465 N.E.2d 1262, 1262, 477 N.Y.S.2d 326, 326-27 (1984).

contended that GOL section 15-108 applies only to settlement by joint tortfeasors and not to claims asserted against parties who were merely vicariously liable.[26] Since MCA was not a joint tortfeasor and was merely vicariously liable, Judge Wachtler asserted that the equitable-share reduction was inapplicable, and that the verdict should have been reduced solely by MCA's settlement amount.[27]

The recognition that section 15-108 applies only to "tortfeasors"[28] and not to indemnification claims was critical to the Appellate Division's reasoning in *Mead*.[29] In determining whether section 15-108 may be invoked, courts traditionally have examined the relationship of the party claiming contribution to the settling tortfeasor against whom the claim is made.[30] If the relationship is based on vicarious liability or indemnity, the provisions of section

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[26] *Id.* at 790, 465 N.E.2d at 1262, 477 N.Y.S.2d at 327 (Wachtler, J., dissenting).

[27] *Id.* at 790, 465 N.E.2d at 1263, 477 N.Y.S.2d at 327 (Wachtler, J. dissenting). The dissent, relying on *Riviello*, stressed that GOL § 15-108 should be read in conjunction with the contribution rights set forth in Article 14, which do not apply to indemnification claims. *Id.* at 792, 465 N.E.2d at 1263-64, 477 N.Y.S. 2d at 327-28. Judge Wachtler asserted that the purpose of § 15-108 was to clarify the principles of settlement and contribution rights enunciated in *Dole* only among joint tortfeasors. *Id.* at 793, 465 N.E.2d at 1264, 477 N.Y.S.2d at 328 (Wachtler, J., dissenting).

[28] *Id.* at 792, 465 N.E.2d at 1264, 477 N.Y.S.2d at 328 (Wachtler, J., dissenting). Judge Wachtler rejected the majority's claim that Hallman-Adkins would lose its contribution rights if § 15-108 were deemed to be inapplicable. *Id.* at 795-96, 465 N.E.2d at 1266, 477 N.Y.S.2d at 330 (Wachtler, J., dissenting). Rather, the dissenting judge argued that the law prior to enactment of GOL § 15-108, which allowed non-settling tortfeasors to seek contribution against tortfeasors who had settled with the injured party before trial, would be appropriate in the *Mead* case. *Id.* (Wachtler, J., dissenting). Judge Wachtler wrote that "[a]bsent a statutory directive to the contrary, there can be no question that a plaintiff's release of one defendant cannot operate to defeat the rights of others who are not parties to the release agreement." *Id.* at 796, 465 N.E.2d at 1266, 477 N.Y.S.2d at 330 (Wachtler, J., dissenting).

[29] *See, e.g.*, Franzek v. Calspan Corp., 78 App. Div. 2d 134, 141-42, 434 N.Y.S.2d 288, 292 (4th Dep't 1980) (§ 15-108 bars contribution claims against tortfeasors who have obtained post-accident releases); Heinsohn v. Putnam Community Hosp., 65 App. Div. 2d 767, 767, 409 N.Y.S.2d 785, 786 (2d Dep't 1978) (§ 15-108 inapplicable if party only liable derivatively). In enacting § 15-108, the legislature intended the term "tortfeasor" to encompass all those who were entitled to contribution rights under CPLR Article 14 — joint tortfeasors, concurrent tortfeasors, successive and independent tortfeasors, alternative tortfeasors, and even intentional tortfeasors. *See* TWENTIETH REPORT, *supra* note 2, at 214, 227.

[30] *See* 94 App. Div. 2d at 424-26, 646 N.Y.S.2d at 905-06; *see also* McDermott v. New York, 50 N.Y.2d 211, 220, 406 N.E.2d 460, 464, 428 N.Y.S.2d 643, 648 (1980) (§ 15-108 inapplicable to indemnity claims); Riviello v. Waldron, 47 N.Y.2d 297, 306, 391 N.E.2d 1278, 1283, 418 N.Y.S.2d 300, 305 (1979) (§ 15-108 must be read in conjunction with contribution rights as defined in CPLR 1401-1403); Dallas & Mavis Forwarding Co. v. Gleason Works, 78 App. Div. 2d 966, 966-67, 433 N.Y.S.2d 899, 900 (4th Dep't 1980) (mem.) (§ 15-108 does not bar plaintiff's action based solely on indemnification claim).

15-108 are not applicable.[31] However, if the tortfeasors each owe a duty to the wronged party, even a duty arising under different theories of liability,[32] a contribution relationship exists, and, it is suggested, section 15-108 should apply.[33]

New York courts have recognized that contribution may lie against a vicariously liable party when the claim is brought by a wrongdoer other than the tortfeasor whose conduct rendered the party vicariously liable.[34] In reaching this conclusion, the courts have reasoned that a person directly responsible for a wrong, and a party vicariously liable for the fault, are together considered to have committed a single wrong.[35] Therefore, the "active" tortfeasor and the vicariously liable party are deemed one "unit" for contribution purposes, and, consequently, both parties are together considered to be "tortfeasors" in relation to other wrongdoers,[36] rendering the provisions of section 15-108 applicable.[37]

Since the active tortfeasor and the vicariously liable party are responsible for a single wrong, it has been held that there can be

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[31] *See, e.g.*, Heinsohn v. Putnam Community Hosp., 65 App. Div. 2d 767, 768, 409 N.Y.S.2d 785, 786-87 (2d Dep't 1978) (mem.) (court examined relationship between parties); Felice v. St. Agnes Hosp., 65 App. Div. 2d 388, 389, 411 N.Y.S.2d 901, 903 (2d Dep't 1978) (court must determine relationship between parties). In *Felice*, the plaintiffs brought a malpractice action against three doctors and the hospital in which the plaintiff's decedent received treatment. 65 App. Div. 2d at 389, 411 N.Y.S.2d at 903. The physicians settled with the plaintiff prior to judgment and sought to be released from further liability in the plaintiff's action against the hospital. *Id.* at 389, 411 N.Y.S.2d at 903. The court refused to grant the physicians' request for release from the suit under GOL § 15-108 until it could be determined whether the parties' relationship was based on vicarious liability or whether they were joint tortfeasors. *Id.* at 390-91, 411 N.Y.S.2d at 903-04.

[32] *See supra* note 5 and accompanying text.

[33] *See* Crow-Crimmins-Wolff & Munier v. Westchester, 90 App. Div. 2d 785, 786, 455 N.Y.S.2d 390, 391 (2d Dep't 1982); North Colonie Cent. School Dist. v. MacFarland Constr. Co., 60 App. Div. 2d 685, 686, 399 N.Y.S.2d 933, 934 (3d Dep't 1977); Taft v. Shaffer Trucking, 52 App. Div. 2d 255, 259, 383 N.Y.S.2d 744, 747 (4th Dep't 1976), *appeal dismissed*, 42 N.Y.2d 974 (1977).

[34] *See supra* note 4.

[35] *See* Graphic Arts Mut. Ins. Co. v. Bakers Mut. Ins. Co., 58 App. Div. 2d 397, 401, 397 N.Y.S.2d 66, 70 (2d Dep't 1977), *aff'd*, 45 N.Y.2d 551, 382 N.E.2d 1347, 410 N.Y.S.2d 571 (1978); *see also* Rivera v. McCarthy, 54 App. Div. 2d 757, 758, 387 N.Y.S.2d 704, 705 (2d Dep't 1976) (contribution exists from one vicariously liable when claim is asserted by other than the active tortfeasor whose actions rendered alleged joint tortfeasor vicariously liable).

[36] *See* Zeglen v. Minkiewica, 12 N.Y.2d 497, 499-500, 191 N.E.2d 450, 451, 240 N.Y.S.2d 965, 967 (1963); Canale v. Binghamton Amusement Co., 45 App. Div. 2d 424, 427, 357 N.Y.S.2d 931, 934 (3d Dep't 1974), *aff'd*, 37 N.Y.2d 875, 340 N.E.2d 729, 378 N.Y.S.2d 362 (1975); Martindale v. Griffin, 233 App. Div. 510, 513, 253 N.Y.S. 578, 581 (4th Dep't 1931), *aff'd*, 259 N.Y. 530, 182 N.E. 167 (1932).

[37] *See supra* note 31 and accompanying text.

no apportionment of liability between these parties.[38] which held that apportionment rules apply only to those parties who share responsibility for causing an injury, and not to parties whose relationship is based on indemnity.[40]

Although the *Mead* Court dramatically reduced the size of the plaintiff's recovery by reducing the verdict by MCA's equitable share of the damages rather than by its settlement amount,[41] such a result is not of itself inconsistent with the policies behind *Dole*, which seek to provide a rule of apportionment among tortfeasors rather than to ensure that a plaintiff's recovery remains large.[42] Furthermore, it is suggested that the Court's decision in *Mead* is further supported by its consistency with the public policy of encouraging settlement in multi-party cases.[43]

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[38] *See* Graphic Arts Mut. Ins. Co. v. Bakers Mut. Ins. Co., 45 N.Y.2d 551, 558-59, 382 N.E.2d 1347, 1350-51, 410 N.Y.S.2d 571, 575 (1978); Canale v. Binghamton Amusement Co., 45 App. Div. 2d 424, 427, 357 N.Y.S.2d 931, 933-34 (3d Dep't 1974), *aff'd*, 37 N.Y.2d 875, 340 N.E.2d 729, 378 N.Y.S.2d 362 (1975). In *Canale*, the plaintiff sued Binghamton Enterprise, Inc., Binghamton Amusement Co., and its employee James Curran for destruction of a building. 45 App. Div. 2d at 426, 357 N.Y.S.2d at 933. The jury apportioned damages of 25% against Enterprise, 65% against Amusement, and 10% against Curran. *Id.* On appeal, the Third Department determined that this apportionment of damages was error, stating that "there can be no unequal apportionment of liability between corporation and employee since there was but a single wrong." *Id.* at 427, 357 N.Y.S.2d at 934. Therefore, the court consolidated the apportioned damages of Amusement and its employee Curran, and entered judgment apportioning damages of 25% against Enterprise and 75% against Amusement and Curran. *Id.* at 428, 357 N.Y.S.2d at 934.

This theory is premised upon the logic of *Dole v. Dow Chemical Co.*,[39]

[39] 30 N.Y.2d 143, 282 N.E.2d 288, 331 N.Y.S.2d 382 (1972).

[40] *See id.* at 153, 282 N.E.2d at 295, 331 N.Y.S.2d at 391-92; *see also* Rogers v. Dorchester Assocs., 32 N.Y.2d 553, 565-66, 300 N.E.2d 403, 410, 347 N.Y.S.2d 22, 32 (1973) (apportionment applies to those who share responsibility in fact). The *Dorchester* Court held that the rule of *Dole* was not intended to overturn the common-law principles of indemnification between vicariously liable tortfeasors and tortfeasors guilty of the acts which caused the harm. 32 N.Y.2d at 565-66, 300 N.E.2d at 410, 347 N.Y.S.2d at 32.

[41] *See supra* notes 23-24 and accompanying text.

[42] *See* Graphics Arts Mut. Ins. Co. v. Bakers Mut. Ins. Co., 45 N.Y.2d 551, 557, 382 N.E.2d 1347, 1350, 410 N.Y.S.2d 571, 574 (1978); *see also* Sage v. Hale, 80 Misc. 2d 812, 814, 364 N.Y.S.2d 781, 784 (Sup. Ct. Saratoga County 1975) (purpose of *Dole* not to alter duties between plaintiff and defendant).

[43] *See* TWENTIETH REP., *supra* note 2, at 211. Prior to the amendment of § 15-108, there was a disincentive for settlement because a settling tortfeasor would still be subject to contribution claims from other tortfeasors. *See supra* note 2. By amending § 15-108 to relieve a settling tortfeasor from contribution claims from other parties, the legislature hoped to encourage pretrial settlements. *See* TWENTIETH REP., *supra* note 2, at 211.