

2390

2009-2010 Regular Sessions

I N S E N A T E

February 19, 2009

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and
when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to settlements
in tort actions and to repeal certain provisions of such law relating
thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 15-108 of the general obligations law is REPEALED
2 and a new section 15-108 is added to read as follows:
3 S 15-108. SETTLEMENTS IN TORT ACTIONS. (A) EFFECT OF SETTLEMENT. (1) A
4 SETTLEMENT REACHED WITH ONE OF TWO OR MORE PERSONS WHO ARE LIABLE OR
5 CLAIMED TO BE LIABLE IN TORT FOR THE SAME INJURY OR WRONGFUL DEATH DOES
6 NOT DISCHARGE ANY OTHER TORTFEASOR FROM LIABILITY UNLESS ITS TERMS
7 EXPRESSLY SO PROVIDE, EXCEPT THAT EACH OF THE REMAINING TORTFEASORS MAY
8 CHOOSE TO REDUCE HIS OR HER LIABILITY TO THE PLAINTIFF OR CLAIMANT BY
9 THE STATED SETTLEMENT AMOUNT, THE CONSIDERATION ACTUALLY PAID, OR THE
10 SETTLING TORTFEASOR'S EQUITABLE SHARE OF THE DAMAGES AS DETERMINED UNDER
11 ARTICLE FOURTEEN OF THE CIVIL PRACTICE LAW AND RULES.
12 (2) WHEN MORE THAN ONE PERSON SETTLES WITH A PLAINTIFF OR CLAIMANT,
13 EACH OF THE REMAINING TORTFEASORS MAY CHOOSE TO REDUCE HIS OR HER
14 LIABILITY TO THE PLAINTIFF OR CLAIMANT BY THE TOTAL OF ALL STATED
15 SETTLEMENT AMOUNTS, THE TOTAL CONSIDERATION ACTUALLY PAID FOR ALL OF THE
16 SETTLEMENTS, OR THE TOTAL OF THE SETTLING TORTFEASORS' EQUITABLE SHARES
17 OF THE DAMAGES AS DETERMINED UNDER ARTICLE FOURTEEN OF THE CIVIL PRAC-
18 TICE LAW AND RULES.
19 (3) THE CHOICE AUTHORIZED BY THIS SUBDIVISION SHALL BE MADE IN OPEN
20 COURT OR IN A WRITING SUBSCRIBED ON BEHALF OF THE PARTY SEEKING TO LIMIT
21 LIABILITY, AND SHALL BE MADE PRIOR TO THE FIRST OPENING STATEMENT OF THE
22 TRIAL UNLESS THE PARTY MAKING THE ELECTION ONLY LATER BECOMES AWARE THAT
23 A SETTLEMENT HAS OCCURRED. IN THE LATTER EVENT, THE ELECTION SHALL BE
24 MADE AS SOON AS REASONABLY PRACTICABLE AFTER THE PARTY MAKING THE

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD01595-01-9

1 ELECTION IS APPRISED OF THE SETTLEMENT OR SETTLEMENTS IN ISSUE, AND, IF
2 FEASIBLE, PRIOR TO THE RETURN OF A VERDICT. IN THE ABSENCE OF SPECIFIC
3 AND TIMELY ELECTION OTHERWISE, A PARTY LIMITING LIABILITY WILL BE DEEMED
4 TO HAVE ELECTED REDUCTION IN THE TOTAL AMOUNT OF THE EQUITABLE SHARE OR
5 SHARES OF ALL SETTLING TORTFEASORS.

6 (4) FOR PURPOSES OF CALCULATING THE REDUCTION OF LIABILITY UNDER THIS
7 SUBDIVISION IN A CASE WHERE A REMAINING TORTFEASOR IS SUBJECT TO A PERI-
8 ODIC PAYMENT JUDGMENT PURSUANT TO ARTICLE FIFTY-A OR ARTICLE FIFTY-B OF
9 THE CIVIL PRACTICE LAW AND RULES, THE MANNER IN WHICH SUCH REDUCTION IS
10 EFFECTED SHALL DEPEND ON THE TYPE OF CREDIT CHOSEN BY THE REMAINING
11 TORTFEASORS.

12 (A) IN THOSE INSTANCES IN WHICH THE REMAINING TORTFEASOR HAS ELECTED
13 PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION TO RECEIVE A CREDIT EQUIV-
14 ALENT TO THE AMOUNT OR AMOUNTS WHICH THE PLAINTIFF OR CLAIMANT RECEIVED
15 IN SETTLEMENT, THE CREDIT PROVIDED BY THIS SUBDIVISION SHALL BE RATABLY
16 APPORTIONED BETWEEN THE PAST DAMAGES OF THE PLAINTIFF AND THE FUTURE
17 DAMAGES. THIS SHALL BE DONE BY DETERMINING THE RATIO BETWEEN THE
18 PLAINTIFF'S PAST DAMAGES AND THE PLAINTIFF'S TOTAL DAMAGES, AND THEN
19 APPORTIONING THAT SAME PERCENTAGE OF THE SETTLEMENT TOWARDS PAYMENT OF
20 THE PLAINTIFF'S PAST DAMAGES. THE REMAINDER OF THE SETTLEMENT CREDIT
21 WOULD BE CREDITED TOWARDS, AND WOULD THUS REDUCE, THE PLAINTIFF'S FUTURE
22 DAMAGES.

23 FOR PURPOSES OF THE APPORTIONMENT OF THE SETTLEMENT CREDIT BETWEEN
24 PAST AND FUTURE DAMAGES, THE RATIO BETWEEN PAST DAMAGES AND TOTAL
25 DAMAGES WILL BE PREMISED UPON THE AMOUNTS OF DAMAGES AWARDED BY THE
26 TRIER OF FACT AFTER ADJUSTMENT HAS ALREADY BEEN MADE FOR ALL OTHER SET-
27 OFFS, CREDITS AND REDUCTIONS OTHERWISE DICTATED BY SUBDIVISION (A) OF
28 SECTION FIVE THOUSAND THIRTY-ONE, OR SUBDIVISION (A) OF SECTION FIVE
29 THOUSAND FORTY-ONE OF THE CIVIL PRACTICE LAW AND RULES, AND BEFORE
30 CONSIDERATION OF ANY OF THE CALCULATIONS DICTATED BY SUBDIVISION (B),
31 (C), (D) OR (E) OF SUCH SECTIONS.

32 (B) IN THOSE INSTANCES IN WHICH THE REMAINING TORTFEASOR HAS ELECTED
33 PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION TO RECEIVE AN EQUITABLE
34 SHARE CREDIT, EACH OF THE PLAINTIFF'S AWARDS FOR PAST DAMAGES AND FOR
35 FUTURE DAMAGES AS REMAIN AFTER ALL OTHER SET-OFFS, CREDITS AND
36 REDUCTIONS OTHERWISE DICTATED BY SUBDIVISION (A) OF SECTION FIVE THOU-
37 SAND THIRTY-ONE OR SUBDIVISION (A) OF SECTION FIVE THOUSAND FORTY-ONE OF
38 THE CIVIL PRACTICE LAW AND RULES SHALL BE REDUCED BY THE SETTLOR'S EQUI-
39 TABLE SHARE OF THE TOTAL CULPABILITY.

40 (B) LIABILITY OF SETTLING TORTFEASOR. EXCEPT AS OTHERWISE PROVIDED IN
41 SUBDIVISION (F) OF THIS SECTION, A SETTLEMENT BETWEEN THE PLAINTIFF OR
42 CLAIMANT AND A TORTFEASOR RELIEVES SUCH TORTFEASOR FROM LIABILITY TO ANY
43 OTHER PERSON FOR CONTRIBUTION OR INDEMNIFICATION.

44 (C) WAIVER OF CONTRIBUTION AND INDEMNIFICATION. EXCEPT AS OTHERWISE
45 PROVIDED IN SUBDIVISIONS (D) AND (F) OF THIS SECTION, A TORTFEASOR WHO
46 HAS SETTLED WITH THE PLAINTIFF OR CLAIMANT SHALL NOT BE ENTITLED TO
47 CONTRIBUTION OR INDEMNIFICATION FROM ANY OTHER PERSON.

48 (D) SETTLING TORTFEASOR'S LIMITED RIGHT TO CONTRIBUTION OR INDEMNIFI-
49 CATION. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (C) OF THIS
50 SECTION, A TORTFEASOR WHO HAS ENTERED INTO A SETTLEMENT WITH A PLAINTIFF
51 OR CLAIMANT MAY SEEK CONTRIBUTION OR INDEMNIFICATION FROM ANY OTHER
52 TORTFEASOR IF, IN CONSIDERATION FOR SUCH SETTLEMENT, THE PLAINTIFF OR
53 CLAIMANT HAS RELEASED FROM LIABILITY THE PERSON OR PERSONS FROM WHOM
54 CONTRIBUTION OR INDEMNIFICATION IS SOUGHT. CONTRIBUTION OR INDEMNIFICA-
55 TION SHALL BE AVAILABLE PURSUANT TO THIS SUBDIVISION EXCEPT TO THE
56 EXTENT THAT IT IS ESTABLISHED BY THE PARTY OR PARTIES FROM WHOM CONTRIB-

UTION OR INDEMNIFICATION IS SOUGHT THAT THE AMOUNT PAID IN SETTLEMENT WAS NOT REASONABLE.

(E) RELATIONSHIP WITH ARTICLE SIXTEEN OF THE CIVIL PRACTICE LAW AND RULES. IF A PERSON SEEKS TO LIMIT LIABILITY PURSUANT TO BOTH SUBDIVISION (A) OF THIS SECTION AND ARTICLE SIXTEEN OF THE CIVIL PRACTICE LAW AND RULES, THE LIMITATION SHALL BE MADE BY DETERMINING THE PERCENTAGE THAT THE PLAINTIFF'S OR CLAIMANT'S NON-ECONOMIC LOSS BEARS TO SUCH PERSON'S TOTAL LOSS, AND THEN APPLYING THE SAME PERCENTAGE OF THE SETTLEMENT CREDIT TO THE PLAINTIFF'S OR CLAIMANT'S NON-ECONOMIC LOSS. A PERSON WHOSE LIABILITY IS REDUCED UNDER THIS SECTION SHALL BE ENTITLED TO AN ADDITIONAL REDUCTION OF LIABILITY PURSUANT TO ARTICLE SIXTEEN OF THE CIVIL PRACTICE LAW AND RULES, BUT ONLY TO THE EXTENT THAT SUCH PERSON'S REMAINING LIABILITY FOR NON-ECONOMIC LOSS EXCEEDS THE LIMITATION OF LIABILITY, IF ANY, ESTABLISHED BY SUCH ARTICLE.

(F) EXEMPTIONS. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO AFFECT OR IMPAIR:

(1) ANY CLAIM FOR INDEMNIFICATION IF, PRIOR TO THE ACCIDENT OR OCCURRENCE ON WHICH THE CLAIM IS BASED, THE PARTY SEEKING INDEMNIFICATION AND THE PARTY FROM WHOM INDEMNIFICATION IS SOUGHT HAD ENTERED INTO A WRITTEN CONTRACT IN WHICH THE LATTER HAD EXPRESSLY AGREED TO INDEMNIFY THE FORMER FOR THE TYPE OF LOSS SUFFERED; OR

(2) A CLAIM FOR INDEMNIFICATION BY A PUBLIC EMPLOYEE, INCLUDING INDEMNIFICATION PURSUANT TO SECTION FIFTY-K OF THE GENERAL MUNICIPAL LAW OR SECTION SEVENTEEN OR SECTION EIGHTEEN OF THE PUBLIC OFFICERS LAW.

(G) SETTLEMENTS WITHIN THE SCOPE OF THIS SECTION. AN AGREEMENT BETWEEN A PLAINTIFF OR CLAIMANT AND A PERSON WHO IS LIABLE OR CLAIMED TO BE LIABLE IN TORT SHALL BE DEEMED A SETTLEMENT FOR THE PURPOSES OF THIS SECTION ONLY IF:

(1) THE AGREEMENT COMPLETELY OR SUBSTANTIALLY TERMINATES THE DISPUTE BETWEEN THOSE PARTIES;

(2) THE PLAINTIFF OR CLAIMANT RECEIVES, AS PART OF THE AGREEMENT, MONETARY CONSIDERATION GREATER THAN ONE DOLLAR; AND

(3) SUCH SETTLEMENT OCCURS PRIOR TO ENTRY OF A JUDGMENT.

(H) VALUATION OF STRUCTURED SETTLEMENTS. WHERE THE MONETARY CONSIDERATION FOR A SETTLEMENT INCLUDES ONE OR MORE PAYMENTS WHICH ARE TO BE MADE MORE THAN ONE YEAR AFTER THE DATE OF THE SETTLEMENT, THE VALUE OF SUCH FUTURE PAYMENTS SHALL, FOR PURPOSES OF SUBDIVISION (A) OF THIS SECTION, BE DEEMED TO BE THE SETTLING TORTFEASOR'S COST IN PROVIDING SUCH PAYMENTS.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, and shall be applicable to any action commenced on or after such effective date.