

## CONTRIBUTION GENERALLY UNDER NEW YORK LAW

Article 14 of the CPLR ("Contribution") provides the rules on claims for contribution. It confers upon a party a right to claim contribution from any other person who may be liable for the same personal injury or property damages. Section 1401 provides the following:

"Except as provided in sections 15-108 and 18-201 of the general obligations law, sections eleven and twenty-nine of the workers' compensation law, or the workers' compensation law of any other state or the federal government, 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 1403 provides the mechanics of filing a claim for contribution. It permits a party to assert the claim in four different ways: (1) in a separate action, (2) by way of a cross-claim, (3) by way of a counterclaim, or (4) by way of a third-party claim in a pending action.

Section 1402 provides the calculation of the amount of contribution to which a party is entitled. It consists of (a) the amount paid by the entitled party, minus (b) the entitled party's equitable share of the judgment that is obtained by the injured party. The "equitable share" is defined simply as the relative culpability of 'each person liable for contribution' (i.e., each adjudged tortfeasor against whom contribution is claimed). One caveat: A defendant entitled to contribution from a contributing defendant can never compel the contributing defendant to contribute more than the contributing defendant's equitable share of the judgment.

Thus, it does not matter where in the caption a particular defendant may find itself. Any defendant may claim contribution from any one or more persons who are subject to liability for the injured party's damages.

A copy of the full text of Article 14 of the CPLR is attached hereto as Exhibit "C".

## EXCEPTIONS THAT AFFECT THE LAW OF CONTRIBUTION

There are several exceptions that impact a defendant's claim for contribution. These are highlighted below.

### Indemnification and Subrogation

First, nothing contained in Article 14 of the CPLR compromises any right that a defendant may have to indemnification, or to subrogation. See CPLR 1404(b).

### Offsets as a result of a Settling Tortfeasor

Second, section 15-108 of the General Obligations Law considers the scenario where one of several potentially liable tortfeasors is released by the injured party. That section makes clear that the injured party's release of one joint tortfeasor does not operate as a release of the other tortfeasors (see 15-108(a)), but it does reduce the claim of the injured party against against the remaining tortfeasors. The amount of reduction is the largest of: (1) the amount stipulated by the release, (2) the consideration paid for the release, and (3) the amount of the released tortfeasor's equitable share of the damages. A copy of Cove Hollow Realty v. 1426 Third Avenue, 603 N.Y.S.2d 454, is attached hereto as **Exhibit "D"**. The Cove Hollow case shows the offset principle in a real world application.

The statute also provides that a released tortfeasor (assuming the release is given in good faith) is no longer liable in contribution to another party, and can no longer seek contribution from another party. A copy of Conrad v. Beck Turek, 891 F. Supp. 962 (1995), which illustrates this rule, is attached hereto as **Exhibit "E"**.

### Workers' Compensation Limitations

Third, section 18-201 of the General Obligations Law provides that an employer and his employee's obligation for paying damages, contribution, or indemnity is limited by the workers' compensation law. See GOL 18-201(2). This workers' compensation limitation (found in sections 10, 11 and 29 of the workers' compensation law) does not apply if the employer failed to procure workers' compensation insurance. Id. It also does not serve as a limitation on the employer's obligation under a claim for contribution or indemnification arising out of a

written agreement entered into by the employer prior to the accident. See GOL 18-201(1).

#### Grave Injury Doctrine

Fourth, section 11 of the workers compensation law (as amended and effective in June of 1999) specifically recites that an employer can be liable for contribution and indemnity to a third party/co-defendant where the injury in question constitutes a "grave injury", as defined in the statute. The statute specifies that a grave injury is "only one or more of the following: death, permanent and total loss of use or amputation of an arm, leg, and, or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability." Attached hereto as **Exhibit "F"** are two cases (Fichter, 688 NYS2d 337 (1999), and Beltran, 681 NYS2d 192 (1998)) explaining the grave injury doctrine, and how it affects a party's right to contribution and indemnification.