



AMENDMENT TO NEW YORK GENERAL OBLIGATIONS LAW 15-108 EXCLUDES VOLUNTARY DISCONTINUANCES

On June 4th, 2007, the New York State Legislature amended General Obligations Law § 15-108 in hopes of encouraging plaintiffs in multi-defendant actions to voluntarily discontinue their claims when it becomes apparent that one of several defendants is not likely to be held liable at trial. The stated goal is to reduce the litigation costs of the apparently blameless defendant, as well as to eliminate needless summary judgment practice by admittedly non-responsible defendants.

CURRENT NEW YORK GENERAL OBLIGATIONS LAW § 15-108: RELEASE OR COVENANT NOT TO SUE

Section 15-108 applies in an action against two or more defendants when the plaintiff reaches an agreement or settlement with one of the defendants, and releases that defendant from the action. The current law provides, in part, that when one of two or more defendants in a personal injury action "settles" and receives a release or a covenant not to sue, the settling defendant may not seek contribution from a non-settling defendant, nor may a non-settling defendant seek contribution from the settling defendant. The law also provides, that if the settling defendant is subsequently found partially liable, any damages that a plaintiff recovers from a non-settling defendant will be reduced by an amount equal to the stipulated settlement, or the settling defendant's equitable share of liability, whichever is greater.

Under the original statute, a settlement and release, covenant not to sue based on an agreed-upon sum of money, or a voluntary discontinuance without payment of money or other consideration to the plaintiff, were treated in exactly the same manner, releasing a defendant from the action. Plaintiffs were generally reluctant to provide a defendant with a voluntary discontinuance without some monetary consideration—even in situations where it appeared that no liability existed. This reluctance was based on the potential for new facts and theories to later arise, creating liability for the previously released defendant, with any damages that a plaintiff might receive from the remaining defendants reduced by the amount of the released defendant's equitable share of liability.

This loophole, in essence, reduced the amount of damages received by a plaintiff by the equitable share of the released defendant's liability, even in cases where the plaintiff might have received no consideration for the release. As a direct result, plaintiffs' attorneys often required a non-liable defendant to bring a summary judgment motion, rather than voluntarily discontinuing the action. Non-settling defendants also found themselves in a difficult position; a defendant who was let out of an action under § 15-108, could not later be sued for contribution by a non-settling defendant who is nevertheless entitled to a reduction equal to the released defendant's share of liability.

BUFFALO

12 Fountain Plaza
Buffalo, New York 14202-2292
Phone: 716.856.0600
Fax: 716.856.0432

AMHERST

400 Essjay Road, Suite 320
Amherst, New York 14221-8228
Phone: 716.250.1800
Fax: 716.250.1806

ROCHESTER

190 Linden Oaks
Rochester, New York 14625-2812
Phone: 585.899.2930
Fax: 585.899.2931

PHOENIX

7047 East Greenway Parkway, Suite 250
Scottsdale, Arizona 85254-8113
Phone: 480.659.2213
Fax: 480.659.3419

LITIGATION ATTORNEYS

Joseph W. Allen (NY)
jallen@jaeckle.com; 716.843.3802

Mitchell J. Banas, Jr. (NY)
mbanas@jaeckle.com; 716.843.3803

Marjorie A. Bialy (NY)
mbialy@jaeckle.com; 716.843.3888

David G. Brock (NY)
dbrock@jaeckle.com; 716.843.3811

B. Kevin Burke, Jr. (NY)
kburke@jaeckle.com; 716.843.3854

William Chen (NY)
wchen@jaeckle.com; 716.843.3836

Bradley A. Hoppe (NY)
bhoppe@jaeckle.com; 716.843.3879

Ronald J. Kisicki (NY, AZ, MI)
rkisicki@jaeckle.com; 480.659.2213

John T. Kolaga (NY)
jkolaga@jaeckle.com; 716.843.3809

Anthony J. Latona (NY)
alatona@jaeckle.com; 716.250.1804

Howard S. Rosenhoch (NY)
hrosenhoch@jaeckle.com; 716.843.3890

Dennis K. Schaeffer (NY)
dschaeffer@jaeckle.com; 716.843.3872

Charles C. Swanekamp (NY)
cswanekamp@jaeckle.com; 716.843.3925

Heath J. Szymczak (NY)
hszymczak@jaeckle.com; 716.843.3909

ADMISSIONS INFORMATION

by state, follows respective attorney name

If the defendant seeking a voluntary discontinuance was forced to move for summary judgment (because plaintiff refuses to grant a discontinuance), a non-settling defendant would be compelled to oppose that motion. If that motion was granted, the settling defendant was forever free from liability, and the remaining defendant was not entitled to any reduction in the amount of the released defendant's equitable share of damages.

AMENDMENT

The amendment adds new subdivision (d), which carves an exception from the statute's scope for a discontinuance given without monetary consideration. Plaintiffs may now voluntarily discontinue an action against a defendant that does not appear to be liable without risking a reduction of their damages award if the released defendant is later found to be partially liable. Non-settling defendants who believe that the released defendant may be partially or fully liable may then implead the released defendant to seek contribution. Under the law as amended, defendants who are released without monetary consideration should be aware that, if new facts and theories of liability arise later, they may be brought back into the action by a non-settling defendant in a third-party claim for contribution or indemnity.

Prior to this amendment, the reduction in damages awarded—by the greater of either the settlement amount or the equitable share of liability—was applied automatically when a defendant who had entered into a release or covenant not to sue was found liable. This still applies to situations in which a settling defendant, as part of the agreement or the release, provides the plaintiff with monetary consideration greater than one dollar. However, in situations in which a claim is voluntarily discontinued without monetary consideration, a non-settling defendant will be required to implead that defendant in order to seek contribution.

IMPLICATIONS FOR THE FUTURE

The amendment became effective July 4, 2007 and applies to releases or covenants not to sue effective on or after that date. Releases and covenants entered into prior to that date, and which do not include monetary consideration greater than one dollar, remain subject to the original provisions of General Obligation Law § 15-108. It remains to be seen whether this amendment will stem plaintiffs' reluctance to voluntarily discontinue claims against a defendant who does not appear to be liable and create a disincentive for defendants to seek voluntary discontinuances without monetary consideration, knowing that they may be brought back into the action by a non-settling defendant seeking contribution. If you have any questions regarding this amendment or our litigation practice, please contact David Brock at 716.843.3811 or dbrock@jaeckle.com.

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