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Tort Law - Uniform Contribution among Tortfeasors Act - Comparative Negligence Act

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TORT LAW—UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT—COMPARATIVE NEGLIGENCE ACT—The Pennsylvania Supreme Court has held that the Comparative Negligence Act has modified the Uniform Contribution Among Tortfeasors Act to require a non-settling tortfeasor to pay his full pro rata share of damages, notwithstanding the fact that the consideration paid by the settling tortfeasor for a release from the plaintiff exceeds the settling tortfeasor's jury determined pro rata share of damages.

Charles v. Giant Eagle Markets, 513 Pa. 474, 522 A.2d 1 (1987).

On January 17, 1977, George Charles was about to enter the front door entrance of a Giant Eagle supermarket in the City of Pittsburgh, Pennsylvania.[1] The floor mat that activated the automatic door was covered with snow and slush.[2] When Charles stepped on the floor mat, the doors failed to open.[3] Charles then attempted to push the doors open, slipped on the snow and slush covered floor mat, and fell to the ground as the doors suddenly swung open.[4] As a result of the fall, Charles sustained injuries to his right arm and left leg.[5]

Charles subsequently filed an action in trespass against Giant Eagle, alleging in his complaint that the supermarket's failure to keep the automatic doors in working order, and the floor mat clear from snow and ice, were the sole and proximate cause of his injuries.[6] Giant Eagle joined, as additional defendants, Stanley Magic Door, Inc., and Jed Doors,[7] stating that the manufacturer was liable for Charles' injuries by designing and selling defective doors.[8]

Before the case went to trial, Giant Eagle entered into a release with Charles,[9] pursuant to the Uniform Contribution Among

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1. Charles v. Giant Eagle Markets, 513 Pa. 474, 522 A.2d 1, 5 (1987).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. Charles v. Giant Eagle Markets, 330 Pa. Super. 76, 478 A.2d 1359, 1360, n.2 (1984). Both parties stipulated that Stanley Magic Door, Inc. and Jed Doors were the same corporation (here-in referred to as Stanley). *Id.*
8. *Id.*
9. *Id.*, n.3. The release read in pertinent part:

It is further Understood and Agreed that I . . . am not releasing any claims and demands that I have against any person, association or corporation other than GIANT EAGLE MARKETS, INC., his agents and employees on account of the . . .

Tortfeasors Act (UCATA),[10] for $22,500.00.[11] The jury verdict at trial, guided by the court's instructions consistent with the provisions of the Comparative Negligence Act (CNA),[12] set Charles' damages at $31,000.00. Liability was apportioned between the tortfeasors at sixty percent for Giant Eagle and forty percent for Stanley.[13]

Upon denial of its post-trial motion to mold the verdict, Stanley entered judgment on the verdict and paid Charles $8,500.00.[14] This amount was $3,900.00 less than Stanley's pro rata share of the damages.[15] Stanley petitioned the court to have the judgment against it marked as satisfied, reasoning that the $31,000.00 verdict was satisfied by Giant Eagle's payment of the $22,500.00 settlement figure and the $8,500.00 paid by Stanley.[16] The trial court granted the petition and directed the prothonotary to mark the

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injuries and damages sustained by me . . ., but for the consideration paid me herein, I further agree that any recovery that I may obtain against any person, association, or corporation other than GIANT EAGLE MARKETS, INC. on account of said . . . injuries and damages shall be reduced to the extent of the pro rata share of such damages as may be attributable to GIANT EAGLE MARKETS, INC. . . . of my damages recoverable against all the tortfeasors.

Id.

10. *Charles*, 513 Pa. at 482, 522 A.2d at 5. The Uniform Contribution Among Tortfeasors Act, 42 PA. CONS. STAT. ANN. § 8326 (Purdon 1978), states in pertinent part:

A release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides, but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release or in any amount or proportion by which the release provides that the total claim shall be reduced if greater than the consideration paid.

Id.

11. 513 Pa. at 482, 522 A.2d at 5.

12. *Id.* at 476, 522 A.2d at 2. The Comparative Negligence Act, 42 PA. CONS. STAT. ANN. § 7102 (Purdon 1978), states in pertinent part:

(b) Recovery against joint defendant; contribution - Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed. The plaintiff may recover the full amount of the allowed recovery from any defendant against whom the plaintiff is not barred from recovery. Any defendant who is so compelled to pay more than his percentage share may seek contribution.

Id.

13. 513 Pa. at 483, 522 A.2d at 5. This allocation of liability set Giant Eagle's pro rata share at $18,600.00 and Stanley's pro rata share at $12,400.00. Thus, due to the release, Giant Eagle paid out $3,900.00 more than its jury determined pro rata share. *Id.*

14. *Id.* The $8,500.00 that Stanley paid Charles was the difference between the jury verdict of $31,000.00 and the $22,500.00 settlement received from Giant Eagle. *Id.*

15. *Id.* at 484, 522 A.2d at 6.

16. *Id.*

judgment against Stanley satisfied, notwithstanding the fact that Stanley's pro rata share of liability was forty percent of the $31,000.00 in damages as determined by the jury.[17]

Charles, arguing that under the CNA and the UCATA he was still entitled to forty percent of the $31,000.00 verdict from Stanley, regardless of Giant Eagle's settlement of over sixty percent of the verdict, appealed to the Pennsylvania Superior Court.[18] Relying on the prior decisions of *Daugherty v. Hershberger*[19] and *Mong v. Hershberger*,[20] the superior court affirmed the trial court's decision.[21]

The Pennsylvania Supreme Court granted allocatur to decide "whether, under the Comparative Negligence Act and the Uniform Contribution Among Tortfeasors Act ("UCATA"), a non-settling tortfeasor is relieved of responsibility for payment of his proportionate share of the damages to the extent that the consideration paid by a settling tortfeasor exceeds the settling tortfeasor's proportionate share of damages as determined by the jury."[22] The court, in holding that the non-settling tortfeasor is liable for the full amount of his pro rata share of the jury verdict, reversed the lower courts, overruled *Daugherty* and rejected *Mong*.[23]

Chief Justice Nix, writing for the majority, premised his opinion,

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17. *Id.*

18. Charles v. Giant Eagle Markets, 330 Pa. Super. 76, 478 A.2d 1359 (1984). On appeal, Charles argued that the CNA had modified the UCATA so as to require a non-settling tortfeasor to pay to a plaintiff the total percentage share of its liability, notwithstanding a previous settlement between the plaintiff and the settling tortfeasor. *Id.*

19. 386 Pa. 367, 126 A.2d 730 (1956), *overruled*, 513 Pa. 474, 522 A.2d 1 (1987). In the *Daugherty* case, the Pennsylvania Supreme Court construed section 4 of the UCATA of 1951 as requiring a reduction in a plaintiff's claim against all tortfeasors by the amount of the settlement figure paid by a settling tortfeasor. *Id.*

20. 200 Pa. Super. 68, 186 A.2d 427 (1962), *allocatur denied*, (1963). In *Mong*, the Pennsylvania Superior Court allowed a settling tortfeasor who paid more than his pro rata share to seek contribution from the non-settling tortfeasor. *Id.*

21. 330 Pa. Super. at 82. A main contention of Charles on appeal was that under the trial court's decision, Stanley would be unjustly enriched by escaping liability for $3,900.00 of the verdict. Charles argued that if a windfall benefit must flow, it should naturally flow to the one wronged, not the wrongdoer. Judge Brosky of the superior court, in disagreeing with Charles' reasoning, did not believe that a windfall benefit would flow to either party under the court's interpretation of *Daugherty* and *Mong*. Under the *Daugherty* rule, Charles could collect $8,500.00 from Stanley; under *Mong*, Giant Eagle could collect $3,900.00 from Stanley by way of contribution. Thus, Stanley would indirectly end up paying its pro rata share of the verdict, while Charles would receive only what he was entitled to, the $31,000.00 verdict, and no more. *Id.*

22. *Charles*, 513 Pa. at 476, 522 A.2d at 2.

23. *Id.* at 483, 522 A.2d at 5.

in part, on the policy of encouraging settlements.[24] The Chief Justice stated that "[i]t would be an equal disservice to a supportive settlement policy to provide a windfall to a non-settling tortfeasor where the settlement proves to be more generous than the subsequent verdict."[25] In making this statement, the Chief Justice was reiterating Justice Musmanno's dissent in *Daugherty*.[26]

According to the court, the position advocated by Stanley would seriously erode the policy of encouraging settlements, as well as suggest that the jury verdict is the maximum amount recoverable.[27] The court was of the opinion that, in light of settlements, the jury verdict should not be a ceiling on the total amount of compensation afforded to a plaintiff since "[p]laintiffs bear the risk of poor settlements; logic and equity dictate that the benefit of good settlements should also be theirs."[28]

The court went on to interpret section 7102(b) of the Comparative Negligence Act[29] as requiring a defendant to pay a proportion of the jury verdict in relation to the percentage of causal negligence attributed to him.[30] Under this interpretation, Stanley would be obligated to pay forty percent of the jury verdict, or $12,400.00.[31] Under the court's interpretation of UCATA section 8326,[32] the parties negotiating the release could determine the amount or proportion of the total claim reduced by the release.[33] The court then went on to find that the parties to the release in the case at bar had stipulated in the release that the total claim would be reduced by Giant Eagle's pro rata share, as later determined by the jury to be $18,600.00, or sixty percent of the verdict.[34] Under the above

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24. *Id.* at 477, 522 A.2d at 2.

25. *Id.* at 478, 522 A.2d at 3.

26. *Id.* Justice Musmanno's dissent in *Daugherty* stated:

> To me it is absurd that a tortfeasor, because of the generosity of another person with whom he is in no way associated except in fault, should by law be excused from paying what a tribunal of law has determined he should pay as a result of his own adjudicated wrong.

Daugherty, 386 Pa. at 377, 126 A.2d at 735.

27. 513 Pa. at 478, 522 A.2d at 3.

28. *Id.* Chief Justice Nix, quoting from the Supreme Court of Texas' opinion in Duncan v. Cessna Aircraft Co., 665 S.W.2d 414, 430 (Tex. 1984).

29. *Id.* at 480, 522 A.2d at 4. *See supra* note 12 for the text of the Comparative Negligence Act.

30. 513 Pa. at 481, 522 A.2d at 4.

31. *Id.*

32. *Id. See supra* note 10 for the text of the pertinent provisions of the Uniform Contribution Among Tortfeasors Act.

33. 513 Pa. at 482, 522 A.2d at 4.

34. *Id.* at 482, 522 A.2d at 5. *See supra* note 8 for terms of the release.

interpretation of the pertinent statutes, the court overruled *Daugherty*.[35]

In rejecting the *Mong* rule, which permitted a settling tortfeasor who had paid more than his pro rata share to seek contribution from a non-settling tortfeasor, the court reasoned that, in the case at hand, the settling tortfeasor (Giant Eagle) freely elected to extinguish its liability through the release. Therefore, the settling tortfeasor should not be permitted the benefit of contribution because of a bad bargain.[36] Chief Justice Nix was of the opinion that the above result was fair and equitable to all the tortfeasors, explaining that:

> Defendants have been required under the proportional reduction rule to pay only their own share of liability, and they have not contributed anything to the settlement excess. Since they are protected by the proportional reduction rule from the burden of a low settlement, they cannot claim that they are entitled to the off-setting benefits of the rule . . . .[37]

Justice Papadakos' concurrence attempted to explain the relationship between the Comparative Negligence Act, the contributory negligence law that it replaced, and the Uniform Contribution Among Tortfeasors Act.[38] Justice Papadakos began with an historical analysis of tort law before the statutes were enacted, and went on to discuss the three common law concepts of tort law that led to the adoption of the statutes in question.[39] The harshness of the early common law concepts led to exceptions which permitted recovery in light of contributory negligence,[40] as well as contribution among tortfeasors[41] under certain circumstances.[42] The exceptions to the no contribution rule were eventually codified and enacted as

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35. 513 Pa. at 482, n.4, 522 A.2d at 5, n.4.

36. *Id.* at 481, 522 A.2d at 4.

37. *Id.* Chief Justice Nix quoting from Comment, *Comparative Negligence, Multiple Parties, and Settlements*, 65 CALIF. L. REV. 1264, 1279 (1977).

38. 513 Pa. at 485, 522 A.2d at 5.

39. *Id.* at 486-87, 522 A.2d at 7. The three concepts discussed are: 1) joint and several liability; 2) contributory negligence; and 3) no right of contribution between joint tortfeasors. *Id.*

40. *Id.* Contributory negligence would not be a bar to recovery where a defendant's conduct was 'willful', 'wanton' or 'reckless', where a defendant violated a rule of criminal safety, where the plaintiff had no way of knowing the danger or means to avoid it, where the plaintiff's negligence occurred during an emergency, or where the plaintiff's negligence was not the proximate cause of the injury. *Id.*

41. *Id.* The courts began to allow contribution as a matter of equity, and also due to the fact that apportioning damages among tortfeasors was still foreign to the law. *Id.*

42. *Id.*

the UCATA.[43] Justice Papadakos then traced the enactment of the UCATA as leading to the decisions in *Daugherty* and *Mong*.[44]

Justice Papadakos explained that *Daugherty*, at the time, was a proper application of the law of contribution among tortfeasors because the law had no method of apportioning damages; therefore, a settlement by one tortfeasor was interpreted as discharging part of the total liability of all tortfeasors, and not as discharging the settling tortfeasor's liability.[45] *Mong*, according to Justice Papadakos, carried *Daugherty* one step further by allowing settling tortfeasors to obtain contribution from non-settling tortfeasors when the settling tortfeasor paid in excess of his share of the verdict.[46] Thus, prior to comparative negligence, and in light of the court's inability to apportion damages and liability, *Daugherty* and *Mong* were viewed as the most equitable solutions available.[47]

According to Justice Papadakos, the Comparative Negligence Act was the legislative response to the harsh doctrine of contributory negligence. It was also an acknowledgement that damages and liability are capable of being apportioned among a plaintiff and defendant tortfeasor.[48] Justice Papadakos saw the statute as a departure from the concept of joint and several liability.[49] He went on to reason that since a tortfeasor's liability is equal only to his percentage of causal negligence under the Comparative Negligence Act, any settlement discharges only the settling tortfeasor's respective percentage share of fault as determined by a court of law.[50] The jury verdict will be reduced by the settling tortfeasor's percentage of fault, and not by the amount of consideration paid for the release.[51]

Lastly, Justice Papadakos distinguished the fact that contribution does not exist under the Comparative Negligence Act when a defendant voluntarily settles with a plaintiff. Justice Papadakos was of the opinion that the right of contribution under comparative negligence arises only when a defendant is compelled to pay more than his share of the jury award, as distinguished from a vol-

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43. *Id.*
44. *Id.* at 488, 522 A.2d at 8.
45. *Id.* The *Daugherty* court's interpretation of section 4 of the UCATA would bar the plaintiff from securing a double recovery under the concept of joint and several liability. *Id.*
46. *Id.* at 490, 522 A.2d at 9.
47. *Id.*
48. *Id.* at 493, 522 A.2d at 9.
49. *Id.* at 494, 522 A.2d at 10.
50. *Id.*
51. *Id.*

untary settlement which would not give rise to that right.[52]

Justice Zappala, the sole dissenter, was of the opinion that the legislative intent in enacting the UCATA and the Comparative Negligence Act was two-fold. First of all, section 8326 of the UCATA provided for a reduction in the claim against a non-settling tortfeasor "in the amount of the consideration paid" by the settling tortfeasor, "or in any amount or proportion by which the release provides . . . if greater than the consideration paid".[53] According to Justice Zappala, the legislature, by clear and unambiguous language, intended the claim against the non-settling tortfeasor to be reduced by the greater of the consideration paid or the proportionate share of liability as determined by a jury.[54] Thus, in the case at bar, the consideration paid by the settling tortfeasor was the larger amount and should have been the figure used in reducing the claim against the non-settling tortfeasor.[55]

Secondly, Justice Zappala was of the opinion that the legislature intended to provide a right of contribution among tortfeasors when a settling tortfeasor paid more than his percentage share of the verdict.[56] Justice Zappala interpreted section 8324 of the UCATA, which provides for the right of contribution among joint tortfeasors, and section 7102(b) of the Comparative Negligence Act, which provides that a "defendant who is compelled to pay more than his percentage share may seek contribution",[57] as being applicable to cases where a settling tortfeasor pays more than his proportionate share of the verdict.[58] Justice Zappala reasoned that "the judiciary's function is to apply the law as it is stated, not to restate it to conform with its own beliefs".[59] Justice Zappala would therefore have affirmed the lower court opinions and held *Daugherty* and *Mong* to be the correct interpretation of the law.[60]

In 1976, the Pennsylvania General Assembly adopted the doc-

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52. *Id.* at 496, 522 A.2d at 11.

53. *Id.* at 499, 522 A.2d at 12. *See* 42 PA. CONS. STAT. ANN. § 8326 (Purdon 1978).

54. 513 Pa. at 499, 522 A.2d at 12. Justice Zappala interpreted the majority's holding as striking out the provision of section 8326 which refers to the consideration paid, thereby utilizing only the proportionate share provision when reducing a claim. *Id.*

55. *Id.* The consideration paid by the settling tortfeasor (Giant Eagle) was $22,500.00, a larger amount than its actual proportionate share, as determined by the jury, of $18,600.00. *Id.*

56. *Id.* at 505, 522 A.2d at 15.

57. *Id. See* 42 PA. CONS. STAT. ANN. § 7102(b) (Purdon 1978).

58. 513 Pa. at 505, 522 A.2d at 15.

59. *Id.* at 499, 522 A.2d at 12.

60. *Id.* at 508, 522 A.2d at 17.

trine of comparative negligence.[61] In adopting this doctrine, contributory negligence was eliminated as a complete bar to a plaintiff's recovery[62] as long as the plaintiff's negligence is no greater than fifty percent.[63] The adoption of a comparative negligence statute was the legislative response to the harsh and inequitable common law doctrine of contributory negligence.[64] Prior to the

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61. Act of July, 9, 1976, 1976 Pa. Laws 855 (codified in 42 PA. CONS. STAT. ANN. § 7102 (Purdon 1978)). Senate Bill 1237 was approved by Governor Milton J. Shapp on July 9, 1976, to be effective 60 days later on September 7, 1976. Final passage in the Senate by a 48-1 vote occurred on June 15, 1976. Final passage in the House by a vote of 173-19 occurred on June 30, 1976. *See* History of Senate Bills Sessions of 1975 and 1976 A-162.

62. The original act read as follows:

> The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:
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> Section 1. Comparative Negligence - In all actions brought to recover damages for negligence resulting in death or injury to person or property, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery by the plaintiff or his legal representative where such negligence was not greater than the causal negligence of the defendants or defendant against whom recovery is sought, but any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff.
>
> Section 2. Recovery against Joint Defendant; Contribution - Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed.
>
> The plaintiff may recover the full amount of the allowed recovery from any defendant against whom such plaintiff is not barred from recovery. Any defendant who is so compelled to pay more than his percentage share may seek contribution.
>
> Section 3. Effective Date - This act shall take effect in 60 days.

Act of July, 9, 1976, 1976 Pa. Laws 855 (codified in 42 PA. CONS. STAT. ANN. § 7102 (Purdon 1978)).

63. Pennsylvania adopted a modified system of comparative negligence as opposed to a pure form. Under the modified system, two variations are permissible. In one case, a plaintiff may recover so long as his negligence is not greater than the negligence of the defendant or defendants. Thus, a plaintiff can recover as long as his contributory negligence is 50% or less (as is the case in Pennsylvania). Under a second variation, a plaintiff can recover as long as his negligence is not equal to or greater than the negligence of the defendant or defendants. In this case, a plaintiff whose negligence constitutes 50% or more would be barred from recovering.

Under a pure system of comparative negligence, a plaintiff can recover damages regardless of his degree of fault. Thus, a plaintiff 90% negligent can still recover 10% damages from a defendant or defendants. *See* Sherman, *An Analysis of Pennsylvania's Comparative Negligence Statute*, 38 U. PITT. L. REV. 51 (1977).

64. The common law doctrine of contributory negligence is said to have its origins in the 1809 case of Butterfield v. Forrestor, 103 Eng. Rep. 926, 11 East 60 (1809), wherein it was held that:

> [a] party is not to cast himself upon an obstruction which has been made by the fault of another, and avail himself of it, if he does not himself use common and ordinary caution to be in the right. . .One person being in fault will not dispense with another's using ordinary care for himself. Two things must occur to support this action,

concept of comparative negligence, a plaintiff who was contributorily negligent was barred by such negligence, no matter how slight, from recovery against a negligent defendant or defendants.[65]

Judicial exceptions[66] to the rule that a plaintiff's contributory negligence operated as an absolute bar to recovery sought to mitigate the harshness of the doctrine. These exceptions permitted a jury to judicially apportion damages through a 'compromise verdict'.[67] Since the law was incapable of apportioning damages between a negligent plaintiff and a negligent defendant, it was equally assumed that the law was also unwilling and/or unable to apportion damages among negligent defendants. Thus, the concept of joint and several liability was devised, whereby each tortfeasor was made fully responsible for the total injury sustained.[68] If an injured plaintiff recovered full satisfaction against one defendant, such satisfaction operated to release the remaining defendants.[69] A tortfeasor who was required to pay the total judgment had no common law right to seek contribution from the remaining tortfeasors. Under the common law, courts were reluctant to assist one guilty party in recovering contribution from another guilty party. Also, since the law was incapable of apportioning damages, it was difficult, if not impossible, to determine the proper amount of

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an obstruction in the road by the fault of the defendant, and no want of ordinary care to avoid it on the part of the plaintiff.

Id. at 927, 11 East at 61.

65. *Id.*

66. *See supra* note 39. *See also* Scott v. Hunter, 46 Pa. 192 (1863); Elliot v. Philadelphia Transp. Co., 356 Pa. 643, 53 A.2d 81 (1947); Ennis v. Atkins, 354 Pa. 165, 47 A.2d 217 (1946); Pittsburgh A. & M., Pass. R. Co. v. Caldwell, 74 Pa. 421 (1843); Johnson v. West Chester P.R. Co., 70 Pa. 357 (1872); Creed v. Pennsylvania R. Co., 86 Pa. 139 (1878).

67. Karcesky v. Laria, 382 Pa. 227, 114 A.2d 150 (1955). Chief Justice Bell, speaking for the majority of the Pennsylvania Supreme Court, stated that:

> The doctrine of comparative negligence, or degrees of negligence, is not recognized by the Courts of Pennsylvania, but as a practical matter they are frequently taken into consideration by a jury. The net result, as every trial judge knows, is that in a large majority of negligence cases where the evidence of negligence is not clear, or where the question of contributory negligence is not free from doubt, the jury brings in a compromise verdict. . . .
>
> Where the evidence of negligence or contributory negligence, or both, is conflicting or not free from doubt, a trial judge has the power to uphold the time-honored right of a jury to render a compromise verdict . . .

Id. at 154.

68. *Charles,* 513 Pa. at 487, 522 A.2d at 7. *See also* Menarde v. Philadelphia Transp. Co., 376 Pa. 497, 103 A.2d 681 (1954).

69. 513 Pa. at 487, 522 A.2d at 7. This was the common law doctrine that a release of one tortfeasor (either by settlement or judgment) released all tortfeasors. *Id.*

contribution.[70]

Judicial exceptions to the harsh rule of no contribution among joint tortfeasors originally found relief in equity rather than under any theory of tort law. The emerging sentiment in Pennsylvania was that since all tortfeasors shared equally in responsibility for the plaintiff's damages, equity demanded that all tortfeasors also share equally in the 'common burden' of compensating for such damages. Equity was the proper relief because the law's incapacity to apportion damages deprived the defendant seeking contribution of an adequate remedy at law.[71]

Judicial exceptions permitting contribution resulted in a modification of the common law concept of joint and several liability. Not only was contribution permitted among tortfeasors, but a release of one tortfeasor no longer operated to release all tortfeasors.[72] Thus, an injured plaintiff who settled with and released one tortfeasor was now permitted to recover the remainder of the damages from the additional non-settling tortfeasor(s).[73]

The aforementioned exceptions to contribution were eventually codified and enacted as The Uniform Contribution Among Tortfeasors Act of July 9, 1951 (UCATA).[74] It is the interpretation

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70. *Id. See* Goldman v. Mitchell-Fletcher Co., 292 Pa. 354, 141 A. 231 (1928).

71. 513 Pa. at 487, 522 A.2d at 7. *See also,* Goldman v. Mitchell-Fletcher Co., 292 Pa. 354, 141 A. 231 (1928); Puller v. Puller, 380 Pa. 219, 110 A.2d 175 (1955).

72. 513 Pa. at 488, 522 A.2d at 7.

73. *Id.*

74. Act of July 9, 1951, ch.248, 1951 Pa. Laws 1130-31 (codified in 42 PA. CONS. STAT. ANN. §§ 8321-8327 (Purdon 1978)). The original text of the act read as follows:

> The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:
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> Section 1. For the purpose of this act, the term "joint tortfeasors" means two or more persons jointly or severally liable in tort for the same injury to persons or property, whether or not judgment has been recovered against all or some of them.
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> Section 2. (1) The right of contribution exists among joint tortfeasors; (2) A joint tortfeasor is not entitled to a money judgment for contribution until he has by payment discharged the common liability or has paid more than his pro rata share thereof; (3) A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.
>
> Section 3. The recovery of a judgment by the injured person against one joint tortfeasor does not discharge the other joint tortfeasors.
>
> Section 4. A release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides, but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release or in any amount or proportion by which the release provides that the total claim shall be reduced if greater than the consideration paid.
>
> Section 5. A release by the injured person of one joint tortfeasor does not relieve him from liability to make contribution to another tortfeasor, unless the release is given

of this Act, both before and after the adoption of a Comparative Negligence Act in Pennsylvania, that was the central focus in *Charles v. Giant Eagle*, as well as in the case law which preceded *Charles*.

The doctrine of contributory negligence had its roots in the misguided belief that the law had no means of distributing liability between plaintiffs and defendants, or among defendants.[75] Thus, the equitable solution in the pre-comparative negligence era was to allocate liability equally according to the number of tortfeasors.[76] It is this pre-comparative negligence method of equally allocating fault, when viewed in the context of the UCATA of 1951, that was the main topic of debate in *Daugherty v. Hershberger*[77] and *Mong*

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before the right of the other tortfeasor to secure a money judgment for contribution has accrued and provides for a reduction to the extent of the pro rata share of the released tortfeasor of the injured person's damages recoverable against all the other tortfeasors.

Section 6. This act does not impair any right of indemnity under existing law.

Section 7. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it.

Section 8. This act shall be known and may be cited as the "Uniform Contribution Among Tortfeasors Act".

Section 9. The act, approved the twenty-fourth day of June, one thousand nine hundred thirty nine (Pamphlet Laws 1075), entitled "An act to provide for contribution among tortfeasors" is hereby repealed. All other acts and parts of acts are hereby repealed in so far as inconsistent with the provisions of this act.

Section 10. The provisions of this act shall become effective immediately upon its final enactment.

Id.

75. *Charles*, 513 Pa. at 487, 522 A.2d at 9.

76. *Id.* at 488, 522 A.2d at 10. For example, if two tortfeasors injured a plaintiff, each would be responsible for 50% of the damages, regardless of their individual degree of negligence or fault. *Id.*

77. 386 Pa. 367, 126 A.2d 730 (1956), *overruled*, 513 Pa. 478, 522 A.2d 1 (1987). In *Daugherty*, plaintiff Daugherty and his family were involved in a three car collision with defendants Mong and Hershberger. Prior to the trial, Mong settled with Daugherty for $13,500.00 to be distributed among the injured plaintiffs according to their individual loss. Daugherty executed a release which discharged Mong from liability and provided that damages recoverable against other tortfeasors (Hershberger) would be reduced to the extent of Mong's pro rata share (50%). Daugherty then sued Hershberger, who joined Mong as an additional defendant. The total jury verdict for the individual injuries was $11,720.99 ($5,860.45 each). When Daugherty attempted to collect 50% of the verdict from Hershberger, Hershberger motioned for a reduction of the verdicts against him, in light of Mong's settlement overpayment, and a discharge and satisfaction of the verdicts. On appeal, the Pennsylvania Supreme Court ruled in favor of Hershberger, holding that where one joint tortfeasor settles with a plaintiff and obtains a release which provides that the damages recoverable against the other joint tortfeasor were to be reduced by the pro rata share of the settling tortfeasor, the plaintiff can only recover from the non-settling tortfeasor the difference between the total verdict and the amount of the settlement which exceeds the settling tortfeasor's pro rata share. In short, Hershberger, by benefit of Mong's settlement, was re-

v. Hershberger.[78] *Daugherty* and *Mong* were two pre-comparative negligence cases discussed extensively in Justice Papadakos' concurrence and, to a lesser extent, in Chief Justice Nix's majority opinion in *Charles v. Giant Eagle.*

Daugherty dealt with the proper interpretation of section 4 of the UCATA of 1951.[79] The issue before the *Daugherty* court was whether section 4 provides for a reduction of a non-settling tortfeasor's liability only to the extent of one-half of the verdict against him, as provided in the release given to the settling tortfeasor. Alternatively, the court had to determine whether section 4 provides for a reduction of each verdict in the amount of the consideration paid by the settling tortfeasor when such consideration is greater than a one-half reduction of the verdict.[80]

Justice Papadakos' concurrence reasoned that *Daugherty* could be viewed as the proper application of the law of contribution because the law was incapable of apportioning damages. Therefore, any settlement by one tortfeasor was interpreted as discharging part of the total liability of all tortfeasors.[81] In fact, on its face, the *Daugherty* holding does appear to be a proper interpretation of section 4 of the UCATA.[82] The *Daugherty* court interpreted section 4 as encompassing the following two prong test when dealing with releases: (1) if the consideration paid for the release is greater than the proportional reduction contained in the release, the consideration figure should be applied to reduce the claim against the other tortfeasors; and (2) if the proportional reduction figure contained in the release is greater than the consideration paid for the release, the proportional reduction figure should be applied to re-

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quired to pay Daugherty only $1,839.26 instead of the $5,860.45 (50%) jury verdict against him. *Id.*

78. 200 Pa. Super. 68, 186 A.2d 427 (1962). *Mong*, the companion case to *Daugherty*, involved an appeal by Mong from the entry of a judgment in favor of Hershberger in an action of assumpsit by Mong against Hershberger for contribution. The amount involved was the difference between Hershberger's 50% pro rata share of the verdict ($5,860.45) and what Hershberger actually paid ($1,839.26). The Pennsylvania Superior Court, in holding for Mong, interpreted section 2 of the UCATA of 1951 as allowing a right of contribution to a settling tortfeasor. *Id.* at 429.

79. *See supra* note 74 for the terms of section 4.

80. *Daugherty*, 386 Pa. at 372-73, 126 A.2d at 733.

81. *Charles*, 513 Pa. at 488, 522 A.2d at 8. Justice Papadakos viewed *Daugherty* and *Mong* as the most equitable solutions to the law of contribution among tortfeasors available at the time. *Daugherty* barred the plaintiff from obtaining a double recovery while *Mong*, by allowing the settling tortfeasor contribution from the non-settling tortfeasor, barred the non-settling tortfeasor from obtaining the benefit of a high settlement. *Id.* at 489, 522 A.2d at 9.

82. *Daugherty*, 386 Pa. at 375, 126 A.2d at 734.

duce the claim against the other tortfeasors.[83]

Under the above analysis, the *Daugherty* court construed section 4 of the UCATA as requiring a reduction in the plaintiff's claim against all tortfeasors by the amount of the settlement figure paid by the settling tortfeasor. The court reached this conclusion because the settlement figure was larger than the proportional reduction figure contained in the release.[84] The *Daugherty* court attempted, in part, to justify its reasoning by stating that its interpretation of section 4 of the UCATA was an abandonment of the common law concept that a release of one tortfeasor worked a release of all tortfeasors. Thus, under this interpretation of the UCATA, an injured plaintiff would now be able to settle with one tortfeasor and still have recourse against the remaining tortfeasors for additional compensation.[85]

No one would argue with Justice Papadakos and the *Daugherty* court's contentions that *Daugherty* embodied the then existing law of contribution among tortfeasors. Nor could there be argument that *Daugherty* was the most equitable solution available in light of the previous common law doctrines. Yet, there are inherent inequities in the majority opinion of *Daugherty* that were attacked in Justice Musmanno's dissent in *Daugherty*.[86]

Justice Musmanno questioned why Hershberger received a 'sheer gratuity' of $4,021.18 by only paying $1,839.26 of a $5,860.44 jury verdict against him, when he denied liability, refused to settle, forced a trial, and was adjudged liable by a jury of his peers for one-half of the verdict.[87] According to the terms of the release,

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83. *Id.* at 373, 126 A.2d at 733. The *Daugherty* court, in interpreting section 4 of the UCATA, held that:

> [I]f the proportion of reduction provided by the release is greater than the amount of the consideration paid for the release, such proportion of reduction prevails, but if, on the other hand, the consideration paid for the release is greater than the proportion of reduction provided by the release, then the amount of the consideration paid for the release prevails.

Id.

84. *Id.* at 375-76, 126 A.2d at 734. The settlement figure of $13,500.00 was larger than the proportional reduction figure contained in the release, which was a one-half reduction of the jury verdict, or $5,860.45. *Id.*

85. *Id.* at 374, 126 A.2d at 733-34.

86. *Id.* at 375-82, 126 A.2d at 734-37. Justice Musmanno's dissent in Karcesky v. Laria, 382 Pa. 227, 114 A.2d 150 (1955), vigorously argued against the use of degrees of negligence by a jury or judge in rendering a compromise verdict, where the weight of evidence indicated that the defendant was negligent and the plaintiff was free from contributory negligence, because a doctrine of comparative negligence had not as yet been adopted in Pennsylvania. *Id.* at 238-47, 126 A.2d at 156-60.

87. 386 Pa. at 376, 126 A.2d at 734-35. According to Justice Musmanno, defendant

Hershberger was only responsible for fifty percent of the verdict, yet he still attempted to escape his share of liability.[88] Justice Musmanno reasoned that since the release protected Hershberger from paying more than his percentage share of liability (fifty percent), it would be absurd to suggest that the same release would allow Hershberger to escape his fifty percent share of liability.[89] Since Hershberger, under the terms of the release, would not suffer the detriment of a bad bargain if Mong had settled for less than the jury verdict, he should not have been allowed the benefit of a bargain in which he took no part.[90]

According to Justice Musmanno, the purpose of the UCATA is to promote the settlement of lawsuits.[91] The majority view in *Daugherty* acts to discourage settlements because each tortfeasor will forego settlement hoping that the other tortfeasor will settle for an amount in excess of his percentage of the jury verdict. Thus, under the *Daugherty* rule, the non-settling tortfeasor could benefit by the ensuing windfall.[92] Finally, Justice Musmanno finds it ironic that, while the trial court approved the settlement and release entered into between Mong and Daugherty,[93] the majority's interpretation of section 4 of the UCATA completely disregarded the terms of the release.[94]

Hershberger wanted a benefit for which he neither bargained nor negotiated for: "He [Hershberger] wants to travel on a train for which he purchased no ticket, he seeks to mount a horse which he did not feed, he desires to ride on a merry-go round which, so far as he was concerned, might never have been built." *Id.* at 377, 126 A.2d at 735.

88. *Id.* at 378, 126 A.2d at 735-36.

89. *Id.* Justice Musmanno quotes from the Statutory Construction Act of May 28, 1937, 46 P.S. § 552, which specifically states: "[T]he Legislature does not intend a result that is absurd, impossible of execution or unreasonable". *Id.*

90. *Daugherty*, 386 Pa. at 378-79, 126 A.2d at 735-36.

91. *Id.* at 377, 126 A.2d at 735. Justice Musmanno stated that: "Section 4 is not couched in as clear and unambiguous language as the majority wants to believe, but there can be no doubt as to the purpose of the Act. Its purpose is to urge the settlement of lawsuits. . . ." *Id.*

92. *Id.*

93. *Id.*

> Pursuant to said Court order, the Daugherty's executed pro rata releases in favor of John Mong in accordance with Sections 4 and 5 of the Pennsylvania Uniform Contribution Among Tortfeasors Act. . . . Said pro rata releases released only John Mong but reduced the damages recoverable by the Daugherty's against all other tortfeasors by the pro rata share of John Mong, which amounted to a fifty (50%) per cent reduction of such damages.

Id.

94. *Id.* The terms of the release provided for a 50% reduction in the damages, while under the court's interpretation of section 4 of the UCATA, the damages would be reduced by the amount of the consideration paid, if that amount was greater than the proportional reduction figure. *Id.*

Chief Justice Nix's majority opinion in *Charles* echoed Justice Musmanno's reasoning in *Daugherty*.[95] The Chief Justice stressed the necessity of "the finality of the settlement agreement,"[96] and warned against the harm of disturbing such a meeting of the minds between the plaintiff and his tortfeasor.[97] He reasoned that adhering to the *Daugherty* rule of providing a windfall to the non-settling tortfeasor would seriously erode the public policy of encouraging settlements.[98]

Perhaps in part to ameliorate the inequities of the *Daugherty* decision, the Pennsylvania Superior Court in *Mong* granted Mong a right of contribution against Hershberger.[99] The *Mong* court read section 2 of the UCATA as allowing contribution if a settling tortfeasor secures a complete release of all tortfeasors by extinguishing the other tortfeasor's liability through the settlement.[100] The court then acknowledged that, although the Mong settlement and release did not operate to completely extinguish the total claim against all tortfeasors,[101] it would be inequitable to allow one tortfeasor to benefit at the expense of another. Similarly, it would be inequitable to allow a plaintiff double recovery.[102] The court refused to give a strict interpretation to the third provision of section 2, stating that such a meaning was not the intent of the legislature.[103] Instead, the *Mong* court interpreted the word 'extinguish' in the third provision of section 2 as encompassing a partial, as well as a total, extinguishment.[104]

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95. *Charles*, 513 Pa. at 478, 522 A.2d at 2-3.

96. *Id.* at 477, 522 A.2d at 2.

97. *Id.* at 478, 522 A.2d at 3.

98. *Id.* "Appellees' concern over a windfall to the plaintiff, if appellee were to be required to pay its full pro rata share, is far overshadowed by the injustice of the result they urge." *Id.*

99. Mong v. Hershberger, 200 Pa. Super. 68, 186 A.2d 427 (1962). *See supra* note 78.

100. 200 Pa. Super. at 70, 186 A.2d at 428. *See supra* note 74 for the text of the third provision of section 2.

101. 200 Pa. Super. at 71, 186 A.2d at 428. The release was a partial extinguishment of Hershberger's liability, operating to extinguish $4,021.23 of the $5,860.50 judgement against Hershberger. *Id.*

102. *Id.* at 71, 186 A.2d at 429. *See also* Swartz v. Sunderland, 403 Pa. 222, 169 A.2d 289 (1961).

103. 200 Pa. Super. at 72, 186 A.2d at 429. The court relied on The Statutory Construction Act of May 28, 1937, P.L. 1019, art. IV, § 51 *et seq.*, 46 P.S. § 551 *et seq.*, which requires that in ascertaining legislative intent of a statute, it is presumed that the legislature did not intend an absurd or unreasonable result. The *Mong* court was of the opinion that depriving a settling tortfeasor of a right to contribution would be unreasonable and absurd. 200 Pa. Super. at 72, 186 A.2d at 429.

104. *Id.* The court suggests that the verb *extinguish* has various meanings to include gradual or limited results, as well as a complete elimination of something. *Id.*

Like *Daugherty*, *Mong* could be judged, on its face, as the most equitable solution available at the time.[105] Yet, *Mong* also contains inherent inequities. While the *Daugherty* court stripped the plaintiff of the benefit of a good bargain,[106] the *Mong* court rewarded the tortfeasor who made a bad bargain by allowing him to recoup his overpayment through contribution.[107] *Mong* circumvents a settlement and release freely bargained for, and in its place exchanges the settlement figure with the verdict figure.[108]

The *Mong* court's rationale suggests that two wrongs make a right. As Chief Justice Nix stated in the case at bar, *Daugherty* was wrongly decided and *Mong* was an attempt to correct that wrong with another wrong.[109] The *Mong* court, like the *Daugherty* court, was so obsessed with preventing the plaintiff from obtaining a double recovery[110] that it began to manipulate the words of the UCATA to fit its own interpretation.[111]

The Comparative Negligence Act can be viewed, in part, as the legislative response to the inequities of the *Daugherty* and *Mong* decisions.[112] Although Chief Justice Nix claims that *Charles v. Giant Eagle* is a case of first impression,[113] the issue as to whether the Comparative Negligence Act modifies the Uniform Contribution Among Tortfeasors Act was first addressed in this jurisdiction in *Mummery v. Farley*.[114] In fact, the *Charles* holding is a mirror

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105. *Charles*, 513 Pa. at 491, 522 A.2d at 8.

106. *Id.* at 491, 522 A.2d at 9. Had the *Daugherty* court required Hershberger to pay his full 50% of the verdict ($5,860.45), the plaintiff, by benefit of settlement, would have received a windfall of $4,021.23. *Id.*

107. *Id.*

108. *Id.* According to Justice Papadakos, the *Mong* court's interpretation of the third provision of section 2 of the UCATA was an invalidation of that portion of the UCATA which prohibits a settling tortfeasor from seeking contribution unless a non-settling tortfeasor's total liability is extinguished by the settlement. Justice Papadakos interprets 'extinguish' in the Act as requiring a complete and total extinguishment. *Id.*

109. 513 Pa. at 482, 522 A.2d at 4.

110. *Mong*, 200 Pa. Super. at 71, 186 A.2d at 428-29. It could also be argued that the *Daugherty* and *Mong* results prevent the plaintiff from receiving a recovery at all. *See, e.g., supra* note 101.

111. 200 Pa. Super. 68, 186 A.2d 427 (1962). The *Mong* court relied on The Statutory Construction Act, *supra* note 105, in ascertaining legislative intent, yet that section of the Act only applies when the words of a law are not explicit: "When the words of a law are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." *Id.*

112. *Charles*, 513 Pa. at 492, 522 A.2d at 9. The legislative history of both the UCATA and the CNA is sparse. *Id.*

113. *Id.* at 476, 522 A.2d at 2.

114. Mummery v. Farley, 32 D.& C.3d 307 (1984). Mummery was struck and killed, while walking to a school bus stop, by a vehicle operated by Farley and owned by North

image of the *Mummery* decision.[115]

The *Mummery* court believed that the *Daugherty* and *Mong* decisions were compelled by the language of the UCATA, even though the result would not only discourage settlements, but would also strip the plaintiff of the benefits of a contract freely entered into with the settling defendant.[116] According to the *Mummery* court, *Daugherty* was an improvement over the pre-UCATA common law results where a release of one tortfeasor released all tortfeasors. However, the court concluded that this improvement did not foster settlements.[117] The *Mummery* court believed that a policy of allowing the plaintiff to retain the benefit of a high settlement gives the plaintiff incentive to settle. It also encourages additional defendants to settle rather than face a trial and a possibly larger determination of liability.[118] For example, *Mummery* argues that at trial the non-settling tortfeasor will be the target of the plaintiff's attack because the settling tortfeasor, by terms of the release, is out of the picture. Since the non-settling tortfeasor is the sole defendant, the verdict could result in the non-settling defendant's liability being greater than it actually is. The court suggests that had Farley gone to trial, his negligence would more than

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American Clothing Card Co. The plaintiff, Mummery's father and administrator of the estate, brought an action in trespass against both Farley for operating the vehicle, and the school district for negligently placing the school bus stop. Before trial, Farley settled with the plaintiff for $90,000 in exchange for a release. At the trial against the school district, the jury found for the plaintiff in the amount of $151,819, apportioning Farley 35% negligent and the school district 65% negligent. Farley filed a motion to mold the verdict and cross-claimed for payback of his $43,863.85 overpayment. The school district paid its full pro rata share of $112,635.50. Farley's cross-claim was denied and the plaintiff was awarded the excess. An appeal to the Pennsylvania Supreme Court was discontinued on July 23, 1984. *Id.*

115. *Id.* at 307. The *Mummery* court held:

> 1. The Comparative Negligence Act of 1978 has modified The Uniform Contribution Among Tortfeasors Act so as to require a non-settling joint tortfeasor to pay the full amount of a verdict entered against him even if that verdict when added to the settlement amount paid before trial to plaintiff by the other joint tortfeasor exceeds the sum of the verdicts against both.
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> 2. A joint tortfeasor who settles for a sum exceeding the verdict later entered against him has no right of contribution against the non-settling defendant for any excess over the verdict against him, nor does he have any right against plaintiff for such excess.

Id.

116. *Id.* at 311.

117. *Id.* at 312. The court suggests that "It is reasonable to suspect that numerous plaintiffs have refused settlements in the 28 years since *Daugherty* came down." *Id.*

118. *Id.* at 312. The *Mummery* court reasoned that the UCATA was originally intended to encourage settlements: "The policy of the Act is to encourage rather than discourage settlements." *Id. See* Uniform Contribution Among Tortfeasors Act, § 1(d), Commissioners Comment (1955 Revision), 12 U.L.A. 65 (Master Ed. 1975).

likely have been determined at a higher percentage than it actually was, as he was the actively negligent party.[119]

The *Mummery* court reasoned that the CNA, unlike the UCATA, contains absolutely no limitations on the total recovery determined by the jury.[120] The CNA permits a right of contribution only in cases where the defendant is compelled to pay more than his pro rata share of liability. According to the court, Farley was not compelled to pay the settlement figure or any amount over and above that for which he was adjudged liable. He freely bought his peace and his way out of a lawsuit, and should be compelled to abide by the terms of the contract he negotiated.[121]

Finally, the *Mummery* court stated that both parties assume risks by settlement; the plaintiff risks accepting a figure that might be lower than what a jury would award, and the defendant risks paying out more than that for which he might subsequently be held liable.[122] The purpose behind a settlement is that if both parties bargain in good faith, the settlement figure will closely approximate a potential jury verdict. At the same time, the settlement will by-pass a potentially costly and lengthy trial.[123]

The strength of the *Mummery* decision lies in the logic of its interpretation of the relationship between the pertinent statutes. Chief Justice Nix, on the other hand, in speaking for the majority in *Charles*, relies to a certain extent on what other courts have said on the matter.[124] In arguing that the settlement figure should prevail over the jury verdict, Chief Justice Nix states that the jury verdict is not a cap on recovery because the settlement should be the final resolution between the parties. Reasoning that the jury verdict is not necessarily an accurate assessment of a tortfeasor's obligation, in light of a settlement agreement, Chief Justice Nix relies on a similar holding of the New Jersey Supreme Court.[125]

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119. 32 D.& C.3d at 314.

120. *Id.* at 315. The *Mummery* court interprets section 4 of the UCATA as setting a ceiling on total recovery to the amount of the jury verdict. *Id.*

121. *Id.* at 316.

122. *Id.*

123. *Id.* at 313.

124. *Charles*, 513 Pa. at 478-79, 522 A.2d at 3. As was noted earlier, Chief Justice Nix appears to side with Justice Musmanno's dissent in *Daugherty*. *Id.*

125. *Id.* In Theobald v. Angelos, 44 N.J. 228, 239-40, 208 A.2d 135 (1965), the New Jersey Supreme Court held:

> There is no precise measure of the amount of the wrong. Even if the trial is as to damages only, successive juries would rarely make the identical appraisal. Nor is there reason to suppose that the jury's evaluation of losses is more accurate than the evaluation made by the parties to the settlement. Surely where liability is contested,

Chief Justice Nix's majority opinion also points out that in the case of the non-settling tortfeasor, the jury verdict is determinative of that tortfeasor's liability. He argues that the jury verdict should not be disturbed, even if it results in a windfall for the plaintiff when added to the settlement figure.[126] In reaching this conclusion, the Chief Justice relies on a Supreme Court of Texas opinion for justification of such a windfall.[127]

As an advocate of the public policy favoring settlements, Chief Justice Nix believes that such a public policy would be advanced by holding a non-settling tortfeasor responsible for his full pro rata share of the damages.[128] This is the same position adopted by the Colorado Supreme Court.[129]

Chief Justice Nix's over-reliance on the decisions of other jurisdictions is due in part to his belief that *Charles* is a case of first impression.[130] Although the Chief Justice makes a stronger argument through his interpretation of the statutes,[131] he gives us little

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> the verdict may not reflect the exact worth of the injuries. When the cost of litigation is taken into account, it becomes still more difficult to say that enforcement of the judgment debtor's pro rata share liability would enrich the plaintiff.

Id.

126. *Charles*, 513 Pa. at 497, 522 A.2d at 3. According to Chief Justice Nix, the settlement amount should in no way affect the liability of the remaining defendants as determined by the jury. *Id.*

127. *Id.* The Supreme Court of Texas, in Duncan v. Cessna Aircraft Company, 665 S.W.2d 414, 430 (Tex. 1984), stated that: "A percent credit necessarily means that settling plaintiffs may recover more than the amount of damages ultimately determined, but they also may recover less. Plaintiffs bear the risk of poor settlements; logic and equity dictate that the benefit of good settlements should also be theirs." *Id.*

128. 513 Pa. at 479, 522 A.2d at 3.

129. *Id.* The Colorado Supreme Court, in Kussman v. City and County of Denver, 706 P.2d 776, 782 (Colo. 1985), claimed that:

> Not deducting the settlement amount from the judgement against the [non-settling tortfeasor] promotes the [Uniform Contribution Among Tortfeasors] Act's goal of encouraging settlements. If the plaintiff knew that any settlement reached would be deducted from the proportionate share owed to the plaintiff by another tortfeasor, the plaintiff would be less likely to settle. Similarly, tortfeasors might refuse to settle, hoping that their just share of damages would be reduced by the settlement amount paid by another tortfeasor.

Id.

130. 513 Pa. at 476, 522 A.2d at 2. It is surprising that the *Charles* court was not aware of the *Mummery* decision. Perhaps Chief Justice Nix meant that the issue was one of first impression at the Pennsylvania Supreme Court level.

131. *Id.* at 480, 522 A.2d at 3-4. Chief Justice Nix's interpretation of section 7102 of the CNA is consistent with *Mummery* in holding a tortfeasor liable for his full pro rata share of damages as well as denying a tortfeasor who settles the right to seek contribution. *See supra* note 62, section 2. Chief Justice Nix suggests a unique approach to interpreting section 8326 of the UCATA, *see supra* note 74, section 4, in claiming that it provides an option for the parties executing the release to determine whether the total claim should be

background or history to enable the reader to fully understand why he takes this stance. Chief Justice Nix fails to go into the history or evolution of the statutes, and says little to distinguish *Mong* and *Daugherty*, other than to overrule *Daugherty* and to reject *Mong*.[132] We are left with the impression that Chief Justice Nix's interpretation is his personal belief of what the law should be rather than what the law is.

Justice Papadakos, on the other hand, provides an historical foundation of the law in his concurrence.[133] Justice Papadakos' historical analysis of the law suggests that the current statutes are the result of an historical evolution with its roots in the common law. According to Justice Papadakos, the harsh common law doctrines of joint and several liability, contributory negligence, and no right of contribution gave way to judicial exceptions which were eventually codified as the UCATA.[134] The UCATA gave rise to the *Daugherty* and *Mong* decisions, which in light of the law's inability to apportion damages, were viewed as the proper application of the then existing law, as well as the most equitable solutions available. The CNA was the legislative reaction to the harsh doctrine of contributory negligence and the misguided belief that the law was incapable of apportioning damages. *Charles,* then, was the first Pennsylvania Supreme Court case to reveal the interaction between the CNA and the UCATA, and how the CNA has modified the UCATA.[135]

Prior to the CNA each tortfeasor was held jointly and severally liable for an equal pro tanto share of the judgment in proportion to the number of tortfeasors.[136] The CNA fixed each tortfeasor's liability by law according to a factual determination of the causal negligence attributable to all the tortfeasors. Therefore, the operation of settlements only discharges the settling tortfeasor's percentage share of causal negligence.[137] Any right of contribution under the CNA exists only where a defendant is compelled to pay more than his pro rata share. Consequently, Justice Papadakos was of the opinion that the legislature, in enacting the CNA, did not

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reduced by the consideration paid or by a separate amount or proportion agreed upon, provided that the total claim is greater than the consideration paid. Chief Justice Nix is silent on what would happen if the consideration was greater than the total claim.

132. 513 Pa. at 480, 522 A.2d at 3-4.
133. *Id.* at 485-86, 522 A.2d at 5.
134. *Id.* at 486-91, 522 A.2d at 6-9.
135. *Id.*
136. *Id.* at 491, 522 A.2d at 10.
137. *Id.*

intend to provide for a right of contribution in the case of settlements.[138]

The sole dissenter of *Charles*, Justice Zappala, reasoned that the majority's interpretation of the UCATA renders it meaningless by denying an explicit legislative right of contribution among tortfeasors.[139] Justice Zappala adheres to the *Daugherty* holding that section 8326 of the UCATA[140] is phrased in the alternative to provide for a reduction in the claim against the non-settling tortfeasor by the larger amount of the consideration paid or the proportionate share of liability.[141] He also criticizes the majority's contention that the *Daugherty* opinion discourages settlements, arguing that settlements have not been crippled by the *Daugherty* decision in the thirty years since it first came down.[142] Unfortunately, Justice Zappala fails to back-up this argument with any empirical data.

Justice Zappala continued his attack on the majority opinion, and in particular, on Chief Justice Nix's reliance on state opinions which have not adopted the statutory language of section 4 of the 1939 UCATA as recommended by the National Commission. The 1939 UCATA was the precursor to the 1951 UCATA, and Pennsylvania was one of the jurisdictions that adopted the text of the 1939 Act verbatim. According to Justice Zappala, neither Texas nor New Jersey adopted the Act as recommended by the commission.[143]

Justice Zappala also noted that of the three jurisdictions relied upon in Chief Justice Nix's opinion, only Colorado has adopted a UCATA comparable to Pennsylvania's.[144] Justice Zappala distin-

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138. *Id.*

139. *Id.* at 496, 522 A.2d at 11.

140. *Id.* Section 8326 as codified is a re-enactment of section 4 of the UCATA of 1951. *See supra* note 74.

141. 513 Pa. at 498-99, 522 A.2d at 12. Justice Zappala attempts to ascertain legislative intent by the language of the statute and relies on the Statutory Construction Act. *Id.*

142. 513 Pa. at 499, 522 A.2d at 11.

143. *Id.* at 500, 522 A.2d at 13.

144. *Id.* at 502, 522 A.2d at 13-14. The Colorado Statute, 6 C.R.S. § 13-50.5-105, states:

> (1) When a release or a covenant not to sue or not to enforce judgement is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:
>
> (a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and
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> (b) It discharges the tortfeasor to whom it is given from all liability for contribution

guished the Colorado case relied upon by the Chief Justice[145] from two later Colorado cases which appear to follow the *Daugherty* line of reasoning.[146] Although the Colorado legislature subsequently amended the statute to provide for a pro rata reduction of the non-settling tortfeasor's claim,[147] Justice Zappala distinguished between a legislative amendment and a court "which usurps the legislature's authority and redrafts the Pennsylvania statute".[148]

Lastly, Justice Zappala believed that the only effect the CNA has on the UCATA is to alter the method for calculating the amount of contribution a tortfeasor may recover.[149] Thus, contribution would be based upon the pro rata share of liability of the tortfeasors.[150]

The UCATA and the CNA were legislative responses to the harsh and inequitable common law tort doctrines.[151] Yet, it is only through Justice Papadakos' concurrence that one comprehends the historical evolution of the common law, case law and statutory law that preceded *Charles*. Justice Papadakos combines the logic of *Mummery* with an historical analysis of the evolving law which culminated in the *Charles* decision. Each step in the law, although the most equitable solution available at the time, contained inherent inequities and prompted either legislative or judicial response. It is to early to predict whether *Charles*, as another step in this historical evolution, will require further judicial or legislative refinement.[152]

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to any other tortfeasor.
Id.

145. 513 Pa. at 503, 522 A.2d at 13. *See supra* note 130.

146. *Id. See* Perlmuter v. Blessing, 706 P.2d 772 (Colo. 1985), and Greenemeier v. Spencer, 719 P.2d 710 (Colo. 1986).

147. 513 Pa. at 500, n.2, 522 A.2d at 13, n.2. *See* 6 C.R.S. § 13-50.5-105(1)(a).

148. *Id.*

149. *Id.* at 505, 522 A.2d at 15.

150. *Id.* This is known as the doctrine of comparative contribution. *See* RESTATEMENT (SECOND) OF TORTS § 885 (1977). *See also* Griffith, *Contribution, Indemnity, Settlements, and Releases: What The Pennsylvania Comparative Negligence Statute Did Not Say*, 24 VILL. L. REV. 503 (1970).

151. *See supra* note 39.

152. Patterson v. Raymark Industries, Inc., 514 Pa. 585, 526 A.2d 357 (1987), on appeal to the Pennsylvania Supreme Court, was remanded back to the Court of Common Pleas of Philadelphia for further consideration in light of Charles v. Giant Eagle.