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# Joint Tortfeasor Releases in Pennsylvania: Who Benefits From the Plaintiff's Bargain Anyway?

## I. INTRODUCTION

In Pennsylvania entering a joint tortfeasor release has traditionally caused practitioners great anxiety and confusion. Unfortunately, this situation is still true today given the Superior Court of Pennsylvania's recent holding in *Walton v. Avco*.<sup>1</sup>

Joint tortfeasor releases usually come into the picture as a result of the following situation. At pre-trial settlement negotiations, one tortfeasor wishes to settle with the plaintiff, while the other tortfeasor wishes to proceed to trial. Plaintiff then executes a release in favor of the settling tortfeasor in exchange for valuable consideration, and the settling tortfeasor is excused from any further litigation. The plaintiff then proceeds to trial solely against the non-settling tortfeasor.

The settlement agreement that was entered into between the plaintiff and the settling tortfeasor represents an estimate of what the settling tortfeasor's liability would be if it were submitted to a jury. Therefore, at that time the release is executed neither party knows whether they have over estimated or under estimated the settling tortfeasor's share of the liability. It is for this reason that attorneys for both plaintiffs and defendants approach joint tortfeasor releases with great trepidation. For, in some instances the plaintiff will receive more money from the settling tortfeasor than he would have obtained had he gone to trial, and in other instances he may end up settling for less than the settling tortfeasor's share of the jury verdict.

The focus of this comment will be on the situation where the plaintiff has made a "good bargain" i.e., where he has received more from the settling tortfeasor than he would have had he gone to trial. In the "good bargain" scenario there are always three is-

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1. 383 Pa. Super. 518, 557 A.2d 372 (1989). In *Walton* the Superior Court held that a settling tortfeasor was entitled to contribution from the non-settling tortfeasor when it turned out that the settlement amount paid by the settling tortfeasor was greater than his proportionate share of the jury verdict. 557 A.2d at 373. This is seemingly contrary to the holding by the Pennsylvania Supreme Court in *Charles v. Giant Eagle Markets, infra*, which stands for the proposition that a settling tortfeasor does not have a right to contribution.

sues that present themselves. The first issue is what amount will be set off from the jury verdict on account of the joint tort settlement?<sup>2</sup> The second issue is whether the settling tortfeasor, who has overpaid his share of the jury verdict, will be entitled to contribution from the non-settling tortfeasor?<sup>3</sup> And third, whether the non-settling tortfeasor must pay his full pro rata share of the jury verdict to plaintiff or whether he is entitled to deduct the settlement amount from the jury verdict and pay to the plaintiff only the difference?<sup>4</sup>

There has been considerable confusion in Pennsylvania as to how these three issues should be resolved. The confusion stems from the differing views as to how the Pennsylvania Uniform Contribution Among Tortfeasors Act (herein "UCATA")<sup>5</sup> and the Contributory Negligence Act<sup>6</sup> combine with the common law principles of joint and several liability to resolve these issues. Also, adding to the confusion is the fact that over the past three years the two appellate court decisions that have grappled with these issues have yielded exactly opposite results.

In 1987 in *Charles v. Giant Eagle Markets*,<sup>7</sup> the Supreme Court of Pennsylvania held that under the UCATA and the Comparative Negligence Act the non-settling tortfeasor must pay his full pro rata share of damages to the plaintiff even when the settling tortfeasor has paid an amount to the plaintiff that is greater than his proportional share of damages.<sup>8</sup> That is, the non-settling tortfeasor may not take advantage of an "over payment" made by a settling tortfeasor. The implication of this holding was three-fold. The first implication being that in situations where one tortfeasor has settled, the amount that is to be off set from the jury verdict is that settling tortfeasor's pro rata share of the jury verdict, not the amount that the settling tortfeasor has paid for his settlement. The second implication being that a plaintiff may recover an amount greater than the jury verdict. And the third and final implication being that because the non-settling tortfeasor must pay his full pro-rata share to the plaintiff, the settling

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2. See Gismondi, *Judges Add to Confusion of Joint Tortfeasor Releases*, 12 PA. L.J. RPTR. No. 21 at 4.

3. *Id.*

4. *Id.*

5. 42 PA. CONS. STAT. ANN. § 8321 et seq. 8324(b), 8326 (Purdon 1982).

6. 42 PA. CONS. STAT. ANN. §§ 7102, 7102(b) (Purdon 1982).

7. 513 Pa. 474, 522 A.2d 1 (1987).

8. 522 A.2d at 3,4.

tortfeasor was not entitled to seek contribution from the non-settling tortfeasor.

In March of 1989, however, the Superior Court of Pennsylvania in *Walton v. Avco*<sup>9</sup> held that a settling tortfeasor is entitled to seek contribution from a non-settling tortfeasor when the settling tortfeasor, in his release agreement, does not give up his right to seek contribution.<sup>10</sup> The Superior Court in *Walton* held that a settling tortfeasor is entitled to seek contribution by distinguishing its holding from the Pennsylvania Supreme Court's decision in *Charles*. The Superior Court distinguished their holding in *Walton* on the grounds that the contract language in the two release agreements was different.<sup>11</sup> While this may be true, it is also clear that the result of *Walton* is in direct opposition to the Pennsylvania Supreme Court's desire that plaintiffs receive "the benefit of their bargain" i.e., the settlement amount plus the non-settling tortfeasors full pro-rata share of damages. Under the *Walton* scheme, the plaintiff does not receive the benefit of his bargain because the non-settling tortfeasor does not have to pay his full pro rata share of damages to the plaintiff since he is subject to a contribution claim from the settling tortfeasor.

## II. HISTORY OF JOINT AND SEVERAL LIABILITY IN PENNSYLVANIA

Before analyzing what impact the UCATA and the Comparative Negligence Act have upon the issues connected with the question of whether a plaintiff is entitled to the "benefit of his bargain," it is important to first set out the basic rules of tort law as they existed in Pennsylvania before these two statutes were enacted, and determine how these two statutes changed earlier tort law. For, only by understanding how these two statutes changed the common law can one evaluate whether the court in *Charles* applied these statutes properly to the issues connected with joint tortfeasor releases.

### A. *The Common Law*

At common law when a person suffered an injury through the mutual or concurrent negligence of two or more tortfeasors, those

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9. 557 A.2d 372.

10. *Id.* at 384.

11. *Id.* In *Walton* the settling tortfeasor specifically stated in the release agreement that he was not giving up his right to seek contribution from the non-settling tortfeasor, while in *Charles* the release agreement made no mention of contribution. *Id.*

tortfeasors were both jointly and severally liable and could be sued for the damages sustained either jointly or severally at the option of the injured party.<sup>12</sup> Furthermore, when a person was injured by the negligence of more than one tortfeasor and obtained a judgment against them, he could proceed against any one of them for payment of the whole judgement.<sup>13</sup> Such payment would operate as a satisfaction to the injured party and would operate as a release to all others who were liable for the same injury.<sup>14</sup> Finally, there was no right to contribution under the common law. This meant that when a particular tortfeasor was forced to pay the common liability of his concurrent tortfeasors, he had no right to seek reimbursement from his fellow tortfeasors.<sup>15</sup>

These particular rules of tort law were based upon two basic assumptions about the law.<sup>16</sup> The first assumption was that courts could not apportion damages among tort-feasors that were mutually at fault because "the law had no scales to determine whose wrongdoing weighed most in the compound that occasioned the

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12. 522 A.2d at 6. See *Borough of Carlisle v. Brisbane*, 113 Pa. 544, 6 A. 372 (1886). In *Borough of Carlisle*, plaintiff brought an action against the Borough of Carlisle to recover damages for injuries sustained by reason of the negligence of the municipality in obstructing public streets without giving warning. 113 Pa. at 545. Mr. Justice Clark in discussing the applicable law stated: "The general rule of law undoubtedly is, where one suffers an injury through the concurrent negligence of two or more persons, they are jointly liable, and may be proceeded against for damages sustained, either jointly or severally at the option of the party injured." *Id.* at 550.

13. 522 A.2d at 6. See *Hilbert v. Roth*, 395 Pa. 270, 149 A.2d 648 (1959). In *Hilbert* the court stated:

It is clear that under the common of Pennsylvania plaintiff could bring separate actions against several defendants for a joint trespass, obtain judgement against each and issue execution on the one he found most satisfactory; but once he received satisfaction, and either gave a release or satisfied the judgement of record, he could not thereafter execute or bring action against any other defendant.

395 Pa. at 272. See also, *Thompson v. Fox*, 326 Pa. 209, 192 A. 107 (1937); *Mason v. c. Lewis Lavine Inc.*, 302 Pa. 472, 153 A. 754 (1931); *Smith v. Roydhouse, Arey and Co.*, 244 Pa. 474, 90 A. 919 (1914); *Seither v. Philadelphia Traction Co.*, 125 Pa. 397, 17 A. 338 (1889); *Fox v. Northern Liberties*, 3 W. & S. 103 (1841).

14. *Hilbert*, 395 Pa. at 272.

15. See *Goldman v. Mitchell-Fletcher Co.*, 292 Pa. 354, 141 A. 231 (1928). In *Goldman* the Pennsylvania Supreme Court discussed when, under the common law, one tortfeasor could seek contribution from another tortfeasor. The Court opined that under the common law there generally was no right to contribution among wrongdoers. However, they went on to point out that this broad rule was confined to those cases where the transaction was void or illegal, or where the fraud or wrongdoing was so great that the court should not hear a suit for the relief of that wrongdoing tortfeasor. 292 Pa. at 358. See also, *Turton v. Paelton Electric Co.*, 185 Pa. 406, 39 A. 1053 (1898); *North Pennsylvania R. Co. v. Mahoney*, 57 Pa. 187 (1868); *Merryweather v. Nixon*, 8 T.R. 186 (1799).

16. *Charles*, 522 A.2d at 7.

mischief."<sup>17</sup> The second assumption was that wrongdoing parties should not be allowed contribution, but should instead be left to their own devices.<sup>18</sup>

These common law rules were viewed by judges and attorneys alike as being extremely harsh. As a result, over time, exceptions were grafted onto these harsh common law rules. For example, the concept of no contribution between tortfeasors found exception by applying the notion that equity is equality, and as a result since all defendants were responsible, they should all equally share in the common burden of having to pay.<sup>19</sup> Therefore, since the joint relation of the tortfeasors imposed equality in duty to pay damages, the courts allowed contribution among tortfeasors.<sup>20</sup> But it must be remembered that contribution was allowed as a matter of equity, it was not founded on any principle of tort law. Once contribution was permitted among tortfeasors, the rule that the release of one tortfeasor acted as a release of all other tortfeasors was modified to permit the plaintiff to settle with one tortfeasor and proceed to trial against all the non-releasing tortfeasors.<sup>21</sup>

### B. *The Uniform Contribution Among Tortfeasors Act*

The Pennsylvania state legislature finally in 1951 codified some of these changes that had taken place in tort law when they enacted the Uniform Contribution Among Tortfeasors Act.<sup>22</sup> The UCATA made fundamental changes in tort law, including the area of joint tortfeasor releases. The two sections of the UCATA that deal with joint tortfeasor releases are sections 8326 and 8324(b). Section 8326 on its face mandates two things. First, a release by the plaintiff of one tortfeasor is to no longer operate as a release of all other tortfeasors.<sup>23</sup> Second, the release of one tortfeasor oper-

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17. *Railroad v. Norton*, 24 Pa. 465 (1855).

18. *Charles*, 522 A.2d at 7.

19. *See Puller v. Puller*, 380 Pa. 219, 110 A.2d 175 (1955). In *Puller* the Supreme Court of Pennsylvania stated that as between two tortfeasors contribution is not a recovery for the tort but is instead an enforcement of an equitable duty to share in the liability for the wrong that was perpetrated. 380 Pa. at 221-2.

20. *Id.*

21. *Charles*, 522 A.2d at 7.

22. Uniform Contribution Among Tort Feasors Act of July 19, 1951, P.L. 1130 (42 PA. CONS. STAT. ANN. 8321, et seq. (Purdon 1982)).

23. 42 PA. CONS. STAT. ANN. § 8326 (Purdon 1982) provides 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

ates to reduce 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 claim shall be reduced if that amount is greater than the consideration paid.<sup>24</sup> Therefore, at least on the face of section 8326, it seems that it is the amount that a settling tortfeasor pays for his release that is to be deducted from the jury's verdict when determining what the non-settling tortfeasor owes the plaintiff.

Section 8324(b) deals with the issue of whether a joint tortfeasor is entitled to seek contribution when he has paid more than his pro rata share. Section 8324(b) provides that a joint tortfeasor is not entitled to contribution until he has either 1) discharged the common liability of all the tortfeasors or 2) paid more than his pro rata share.<sup>25</sup> The implication of section 8324(b) would seem to be that a settling tortfeasor is entitled to seek contribution when it turns out that the settlement amount to be paid to the plaintiff was greater than his pro rata share.

Two of the first cases that interpreted and applied the UCATA to the joint tortfeasor release situation were *Daugherty v. Hershberger*<sup>26</sup> and the companion case of *Mong v. Hershberger*.<sup>27</sup> In *Daugherty* the issue was whether a non-settling tortfeasor must pay his full pro rata share of damages to a plaintiff when the amount the settling tortfeasor paid for his release turned out to be greater than his share of damages.<sup>28</sup> In other words, was a non-settling tortfeasor able to take advantage of an "over payment" made by a settling tortfeasor? The Supreme Court of Pennsylvania in *Daugherty* held that where the plaintiff settles with one tortfeasor for more than that tortfeasors share of damages, then the amount of the settlement must be applied to the judgement and the non-settling tortfeasor is liable to the plaintiff for only the remaining balance of the judgement.<sup>29</sup> Subsequently in *Mong*<sup>30</sup> the

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that the total claim shall be reduced if greater than the consideration.

*Id.*

24. See *supra* note 23.

25. 42 PA. CONS. STAT. ANN. § 8324(b) (Purdon 1982) provides in pertinent part: "A joint tortfeasor is not entitled to a money judgement for contribution until he has by payment discharged the common liability or paid more than his pro rata share thereof." *Id.*

26. 386 Pa. 367, 126 A.2d 730 (1956) *overruled* in 513 Pa. 474, 522 A.2d 1 (1987).

27. 200 Pa. Super. Ct. 68, 186 A.2d 427 (1962).

28. 126 A.2d at 731.

29. *Id.* at 731. In *Daugherty*, plaintiff(s) secured judgements in the total amount of \$11,720.99 against two tortfeasors. *Id.* at 732. Prior to trial plaintiff(s) settled with one tortfeasor for \$13,500.00. *Id.* at 732. In consideration for the funds paid in the release, plaintiff agreed to relieve settling tortfeasor from any liability and to reduce by 50% the damages

Superior Court of Pennsylvania held that while the non-settling tortfeasor was entitled to offset the amount paid for the settlement release from the jury verdict, the settling tortfeasor had a right to bring suit against the non-settling tortfeasor for contribution.<sup>31</sup> The Superior Court reached this holding by reasoning that it would be absurd and unreasonable, given the holding in *Daugherty*, to hold that a settling tortfeasor could not seek contribution from the non-settling tortfeasor.<sup>32</sup>

It is clear, under the holdings of *Daugherty* and *Mong*, that a plaintiff was not entitled to the "benefit of his bargain." That is, if the plaintiff made a "good bargain" with the settling tortfeasor and recovered more from him than what the jury later determined to be his share of damages, the plaintiff was not entitled to this amount plus the non-settling tortfeasors full pro rata share of the damages. Instead, under the conjunctive rules of *Daugherty* and *Mong*, the non-settling tortfeasor was able to take advantage of the "over payment" made by the settling tortfeasor and deduct this amount from the jury verdict and pay only the difference. The settling tortfeasor could then seek contribution from the non-settling tortfeasor in an amount equal to the benefit received by the non-settling tortfeasor because of the over payment. Therefore, it can be said that the conjunctive rules of *Daugherty* and *Mong* were pro-settling tortfeasor. For under the rules of *Daugherty* and *Mong* three things were certain. First, the plaintiff was not entitled to "the benefit of his bargain." Second, the non-settling tortfeasor would always end up paying an amount equal to his pro rata share of damages, for even if he did not have to pay his whole share to the plaintiff, he was subject to a contribution claim from the settling tortfeasor. And third, the risks regarding overpayment in settlement negotiations were significantly reduced for the settling tortfeasor because in the event of overpayment he could seek con-

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he could recover against the non-settling tortfeasor. After the jury verdict came in for \$11,720.99 plaintiff(s) attempted to collect 50% of the verdict (\$5,860.50) from the non-settling tortfeasor. The non-settling tortfeasors argued that he was only liable for the difference in settling tortfeasors under payments to certain plaintiff(s), and where settling tortfeasors had over paid what the jury had later decided to be the damages, he owed nothing. And where settling tortfeasors had underpaid in excess of 50% of the jury verdict, the non-settling tortfeasor argued he was responsible for only 50% of the jury verdict. *Id* at 732. This scheme of the non-settling tortfeasor was endorsed, with the result that the non-settling tortfeasor was only required to pay (\$1,839.25), instead of 50% of the jury verdict (\$5,860.50). *Id* at 734.

30. 200 Pa. Super. Ct. 68, 186 A.2d 427 (1962).

31. 186 A.2d at 429.

32. *Id.*



tribution from the non-settling tortfeasor.

In evaluating whether the holdings of *Daugherty* and *Mong* properly applied the UCATA, it must be remembered that at the time *Daugherty* and *Mong* were decided two common law principles were still in effect. The first common law principle that was still in effect was that both tortfeasors were jointly and severally liable for all the damages caused to plaintiff.<sup>33</sup> The second common law principle that was still in effect was that the law did not possess any method to apportion damages among joint tortfeasors.<sup>34</sup> Justice Papadakos in his concurring opinion in *Charles v. Giant Eagle Markets*<sup>35</sup> opined that with these two common law concepts in mind it was possible to justify the *Daugherty* Court's application as having been proper for its time.<sup>36</sup> Justice Papadakos reasoned that since both tortfeasors in *Daugherty* were jointly and severally liable and the law at that time was incapable of apportioning the damages, any settlement arrived at between the plaintiff and the settling tortfeasor could be construed as discharging part of a common burden shared by all tortfeasors.<sup>37</sup> Therefore, the settling tortfeasor's settlement with plaintiff could be seen as an attempt to discharge the common liability of both settling and non-settling tortfeasors. This being the case, if the settling tortfeasor paid more for the joint harm caused by both tortfeasors, he could pass that benefit onto the non-settling tortfeasor and thereby reduce the amount the non-settling tortfeasor would have to pay to plaintiff.<sup>38</sup>

### C. *The Comparative Negligence Act*

In 1976 Pennsylvania adopted the Comparative Negligence Act.<sup>39</sup> The Act, as it was adopted, had a significant impact on tort law in two major respects. First, until 1976, if a plaintiff was guilty of contributory negligence he was barred from bringing suit,<sup>40</sup> but

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33. See *supra* note 12.

34. See *supra* note 17.

35. 522 A.2d at 5 (Papadakos, J., concurring).

36. *Id.*

37. *Id.*

38. *Id.*

39. P.L. 855 No. 152, 17 P.S. § 2101 and 2102, now, 42 PA. CONS. STAT. ANN. § 7102, (Purdon 1982) became effective on July 9, 1976.

40. While under the common law contributory negligence was an absolute bar to recovery, See *Borough of Carlisle v. Brisbane*, 113 Pa. 544, 550, (1886) there were several common law exceptions. For example, in *Elliot v. Philadelphia Transp. Co.*, 356 Pa. 643, 53 A.2d 81 (1947) the Supreme Court of Pennsylvania held that a plaintiff is only barred from

under the Comparative Negligence Act contributory negligence no longer automatically barred a plaintiff from recovery.<sup>41</sup> Under the Comparative Negligence Act so long as a plaintiff's negligence was not greater than the causal negligence of the defendant(s) against whom he was seeking recovery, he could recover damages.<sup>42</sup> That is, as long as the plaintiff's contributory negligence was not greater than 50 percent of the total negligence, he could still recover damages from the tortfeasors. The second major impact that the Comparative Negligence Act had was that a court of law could finally apportion damages among joint tortfeasors.<sup>43</sup> Under the Act, each tortfeasor was now only liable for that portion of the damages, in the ratio of the amount of his causal negligence, to the amount of causal negligence attributed to all defendants.<sup>44</sup> Also, under the Act any tortfeasor who was compelled to pay more than his legal proportional share could seek contribution.<sup>45</sup>

The Comparative Negligence Act has a bearing on the joint tortfeasor release scenario for two reasons. First, some judges in Pennsylvania have taken the view that the Act calls for a change in the rules espoused in *Daugherty* and *Mong* because now joint tortfeasor liability is capable of being apportioned as a matter of law.<sup>46</sup> For example, Justice Papadakos in his concurring opinion in

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recovery for harm caused by a defendant's reckless disregard for the plaintiffs safety if, the plaintiff recklessly exposed himself thereto. *Id.*

41. The text of the Comparative Negligence Act provides in pertinent part as follows: § 7102(a) General rule—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 defendant or defendants against whom recovery is sought but any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to plaintiff.

42 PA. CONS. STAT. ANN. § 7102(a) (Purdon 1982).

42. See 42 PA. CONS. STAT. ANN. § 7102(a) (Purdon 1982).

43. See 42 PA. CONS. STAT. ANN. § 7102(b) (Purdon 1982).

44. The text of the Comparative Negligence Act provides in pertinent part as follows: § 7102(b) Recovery against joint defendant; contribution—where recovery is allowed against more than one defendant, each defendant shall be liable for that portion of the total dollar amount awarded as damages in the ratio of the amount of causal negligence attributed to all defendants against who 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.

42 PA. CONS. STAT. ANN. § 7102(b) (Purdon 1982).

45. See *supra* note 44.

46. See *infra* note 47.

*Charles v. Giant Eagle Markets*<sup>47</sup> opined that since the Comparative Negligence Act allows joint tortfeasor liability to be apportioned, it necessarily follows that any consideration a tortfeasor pays for his release should discharge only his liability.<sup>48</sup> That is, there is no longer any foundation to reason that a settling tortfeasor is paying for anything more than his release from his sole proportionate share of liability.<sup>49</sup>

The second reason the Comparative Negligence Act has a bearing on joint tortfeasors releases is because under the language of the Act it seems clear that any defendant who is compelled to pay more than his percentage share may seek contribution.<sup>50</sup> This would seem to indicate that when a settling tortfeasor has paid more than his pro rata share, the settling tortfeasor is entitled to seek contribution from the non-settling tortfeasor.

### III. CHARLES V. GIANT EAGLE MARKETS

In 1987 the Pennsylvania Supreme Court in *Charles v. Giant Eagle Markets*,<sup>51</sup> for the first time since the passing of the Comparative Negligence Act, addressed the issues connected with joint tortfeasor releases under the "good bargain scenario." That is, where the plaintiff settled for an amount that turned out to be greater than the settling tortfeasors proportionate share of damages.

In *Charles*, appellant, George Charles, brought suit against [appellee] Giant Eagle Markets, for damages sustained in a fall near one of Giant Eagle's electronically operated doors.<sup>52</sup> Giant Eagle subsequently joined Stanley Magic Door as an additional defendant.<sup>53</sup> Prior to trial, Charles executed a release to Giant Eagle in exchange for \$22,500.00.<sup>54</sup> Mr. Charles then proceeded to trial against the non-settling defendant Stanley Magic Door. After trial the jury returned a verdict in favor of Mr. Charles for \$31,000.00.<sup>55</sup> The jury, in accordance with the Comparative Negligence Act, ap-

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47. 522 A.2d at 10 (Papadakos, J., concurring).

48. *Id.*

49. *Id.*

50. See 42 PA. CONS. STAT. ANN. § 7102(b) (Purdon 1982). Section 7102(b) provides in pertinent part: "Any defendant who is compelled to pay more than his percentage share may seek contribution." *Id.*

51. 513 Pa. 474, 522 A.2d 1,2 (1987)

52. *Id.* at 2.

53. *Id.*

54. *Id.*

55. *Id.*

portioned the negligence. The jury found Giant Eagle Markets to be (60%) negligent and Stanley Magic Door (40%) negligent.<sup>56</sup> Therefore, Giant Eagle Market's proportionate share of the verdict was \$18,600.00 and Stanley Magic Door's share of the verdict was \$12,400.00.

However, Stanley Magic Door only paid to Mr. Charles \$8,500.00 taking the position that it did not owe to Mr. Charles its full *pro rata* share of damages,<sup>57</sup> but was entitled to deduct the amount Giant Eagle Markets had paid for its release<sup>58</sup> from the jury verdict and pay to Mr. Charles only the difference.<sup>59</sup> Conversely, Mr. Charles contended that Stanley Magic Door owed him the full \$12,500.00 regardless of how much Giant Eagle Markets had paid for their release. Subsequently, Stanley Magic Door filed a petition to have the judgement marked satisfied.<sup>60</sup> The trial court granted the petition and the Superior Court affirmed.<sup>61</sup>

In *Charles*, the Pennsylvania Supreme Court framed the issue as being whether under the Comparative Negligence Act and the UCATA a non-settling tortfeasor is relieved of his responsibility to pay his full *pro rata* share of damages to the extent that the amount paid by a settling tortfeasor for a release from the plaintiff exceeds the settling tortfeasors *pro rata* share of damages.<sup>62</sup> The Pennsylvania Supreme Court held that the non-settling tortfeasor is required to pay his full *pro rata* share of the jury verdict *regardless* of the fact that the plaintiff may have received more in a set-

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56. *Id.* 42 PA. CONS. STAT. ANN. § 7102(b) (Purdon 1982) requires in pertinent part: ". . . 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 . . ." *Id.*

57. 522 A.2d at 2. Stanley Magic Door's full *pro rata* share of damages was Twelve Thousand Five Hundred Dollars (12,500.00). *Id.*

58. *Id.* Giant Eagle Markets had paid Twenty Two Thousand Five Hundred Dollars (22,500.00) to be released from any further litigation. *Id.*

59. *Id.* Stanley Magic Door contended that they were entitled to subtract Twenty Two Thousand Five Hundred Dollars (22,500.00) from Thirty One Thousand Dollars (31,000.00) and pay to the plaintiff only the difference.

60. *Id.*

61. *Id.* See *Charles v. Giant Eagle Markets, Inc.*, 330 Pa. Super. 76, 478 A.2d 1359 (1984).

62. 522 A.2d at 2. The court in *Charles* stated:

The important issue of first impression raised in this appeal is whether, under the Comparative Negligence Act and the Uniform Contribution Among Tort Feasors Act ("UCATA"), a non-settling tortfeasor is relieved of responsibility for payment of his proportionate share of damages to the extent that the consideration paid by a settling tortfeasor for a release from the plaintiff exceeds the settling tortfeasor's proportionate share of the damages as determined by the jury.

*Id.*

tlement amount from the settling tortfeasor than the settling tortfeasors proportional share of damages (emphasis added). This holding in effect overruled the previous ruling in *Daugherty*.<sup>63</sup>

The holding in *Charles* is significant because it marks a shift in who receives the benefit from plaintiff's good bargaining. As illustrated previously under the rules of *Daugherty* and *Mong*, the law favored settling tortfeasors because if they overestimated their liability in settlement, they could seek contribution from the non-settling tortfeasor; the end result being that the plaintiff was robbed of the benefit of his good bargaining. Now under the holding in *Charles* the non-settling tortfeasor has to pay his full pro rata share of damages to the plaintiff. The new result being that a plaintiff is now entitled to the "benefit of his bargain" and the settling tortfeasor is no longer able to seek contribution when he has overestimated his liability. Therefore, the holding in *Charles* represents a shift in benefit from the settling tortfeasor to the plaintiff.

The majority in *Charles* based this holding upon three principles. The first is that the majority believed that holding the non-settling tortfeasor liable for his proportional share would advance the public policy in favor of settlement.<sup>64</sup> The majority stressed that settlement is a valuable tool in dispute resolution, and one of the main inducements for a tortfeasor to settle is the certainty that he will be relieved from the entanglements of further litigation.<sup>65</sup> Therefore, any subsequent trial against the remaining tortfeasors should not have any bearing on the resolution reached between the plaintiff and settling tortfeasor. For this reason the amount of the settlement agreement should play no role at trial, not even in determining what amount the non-settling tortfeasor should pay to the plaintiff.<sup>66</sup> In essence, the finality of settlement agreements requires the rule that once at trial neither litigating party should be entitled to look back to the provisions of a settlement agreement.

The majority also opined that letting a non-settling tortfeasor pay less than his proportional share of damages to the plaintiff would directly impede the public policy favoring settlement.<sup>67</sup> To support this proposition the majority cited the Colorado Supreme

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63. *Id.*

64. *Id.*

65. *Id.* at 3.

66. *Id.*

67. *Id.*

Court case of *Kussman v. City and County of Denver*.<sup>68</sup> In *Kussman* the Colorado Supreme Court pointed out that allowing a non-settling tortfeasor to pay less than his full pro rata share to a plaintiff, would impede settlement in two significant ways. First, plaintiffs would be less likely to settle because they would know that any extra amount they might receive from the settling tortfeasor would simply be deducted from the pro rata share of the non-settling tortfeasor.<sup>69</sup> Second, tortfeasors would be less likely to settle because they would be hoping that their proportional share of damages might be reduced by an "overpayment" made by another tortfeasor.<sup>70</sup>

The second principle upon which the majority in *Charles* based its holding, was their belief that it was required under the Comparative Negligence Act<sup>71</sup> that a non-settling tortfeasor pay to plaintiff his full pro rata share of damages.<sup>72</sup> The majority pointed out that under the explicit language of the Comparative Negligence Act two things are required: First and foremost each tortfeasor is liable to the plaintiff for his proportional share of damages;<sup>73</sup> Second, the Act limits a settling tortfeasor's right to seek contribution to only those instances where he is compelled to pay more than his share.<sup>74</sup> The majority, in applying the Comparative Negligence Act to the scenario of joint tortfeasor releases opined that a non-settling tortfeasor must pay to plaintiff his full pro rata share of damages.<sup>75</sup> The majority also pointed out that the Comparative Negligence

68. 706 P.2d 776 (Colo. 1985)(enbanc).

69. *Id.* at 782. In *Kussman* the Colorado Supreme Court stated:

Act deducting the settlement amount from the judgment 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.

*Id.*

70. *Id.* The court in *Kussman* also stated "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.*

71. 42 PA. CONS. STAT. ANN. § 7102(b) (Purdon 1982).

72. 522 A.2d at 3-4.

73. *Id.* at 4. The pertinent language of 42 PA. CONS. STAT. ANN. § 7102(b) provides, ". . . 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 attributed to all defendants . . ." *Id.*

74. 522 A.2d at 4. 42 PA. CONS. STAT. ANN. § 7102(b) (PURDON 1982) also provides that the right to seek contribution to the amount a defendant "is so compelled to pay more than his percentage share." *Id.*

75. 522 A.2d at 4.

Act does not give a settling tortfeasor a right to seek contribution when it turns out that the amount he paid for his release was greater than his proportional share of damages.<sup>76</sup> This is so because under the Act a tortfeasor is only entitled to contribution where he has been *compelled* to pay more than his proportional share not when he has voluntarily paid more than his proportional share (emphasis added). Therefore, since the settling tortfeasor's "overpayment" is the result of a settlement agreement freely entered into, it cannot be said that he was compelled to pay more than his proportional share.<sup>77</sup>

The third and final principal upon which the court in *Charles* based its holding was that the Uniform Contribution Among Tortfeasors Act supported such a holding.<sup>78</sup> The majority read section 8326<sup>79</sup> of the UCATA in conjunction with the release executed by Mr. Charles and concluded that they were in perfect harmony.<sup>80</sup>

It is also important to note that the court in *Charles* flatly rejected the argument that a plaintiff should not be entitled to the "benefit of his bargain" because a plaintiff should not be allowed to recover more than the jury's verdict.<sup>81</sup> The court pointed out that this argument was based on the flawed premise that a jury verdict more accurately measures a tortfeasor's obligation than a settlement agreement.<sup>82</sup> The majority to support this proposition cited the New Jersey Supreme Court case of *Theobald v. Angelos*.<sup>83</sup> In *Theobald* the court pointed out that there was no precise measure for the amount of wrong done by a tortfeasor. This is evidenced by the fact that even in a trial where the only issue was as to damages, successive juries would almost never make the same exact appraisal. This being the case, the New Jersey Su-

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76. *Id.*

77. *Id.*

78. *Id.*

79. 42 PA. CONS. STAT. ANN. § 8326 (Purdon 1982). The portion of § 8326 which the majority focused on when reaching the statute in conjunction with the tort release was the part that leads ". . . 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.*

80. 522 A.2d at 4-5. The release agreement between Giant Eagle Markets and Mr. Charles read as follows ". . . I further agree that any recovery that I may obtain against any . . . corporation other than Giant Eagle Markets, Inc. . . . shall be reduced to the extent of the pro rata share of . . . Giant Eagle." *Id.* at 5. The majority in *Charles* focusing on the language of section 8326 (*see supra* note 79) and this release agreement, found no inconsistency. *Id.* at 5.

81. *Id.* at 3.

82. *Id.*

83. 44 N.J. 228, 208 A.2d 129 (1965).

preme Court opined that there was no reason to suppose that a jury's estimate of damages was any more accurate than an evaluation made by the parties themselves during settlement.<sup>84</sup>

In evaluating the Supreme Court of Pennsylvania's decision in *Charles* to depart from the holdings of *Daugherty*<sup>85</sup> and *Mong*<sup>86</sup> one thing becomes apparent; the court's decision was driven mainly by equitable and policy considerations that dictate that a plaintiff should be entitled to the "benefit of his bargain." The equitable consideration that lead to this conclusion was that it would be unjust to allow either the settling tortfeasor or non-settling tortfeasor to benefit from a plaintiff's shrewd dealing, while at the same time penalizing the plaintiff. The public policy consideration was that the best way to encourage settlements was to make sure that settlement agreements were final and had no bearing on matters at trial.

However, while the decision in *Charles* was driven by equitable and public policy consideration, there are two grounds upon which the decision may be criticized.<sup>87</sup> The first is that the holding is seemingly at variance with section 8326 of the UCATA.<sup>88</sup> Critics argue that section 8326 mandates on its face that the effect of a joint tort settlement is to reduce a plaintiff's verdict against a non-settling tortfeasor by the *greater* of either the amount received in settlement from the settling defendant, or the settling defendant's proportionate share of the verdict. As pointed out in Justice Zappala's dissent,<sup>89</sup> the majority in *Charles* seemed to ignore the plain language of section 8326.

The second ground upon which the decision in *Charles* has been criticized is its holding that a settling tortfeasor has no right to seek contribution against a non-settling tortfeasor.<sup>90</sup> Critics argue that this conclusion is at variance with section 8324(b) of the

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84. 44 N.J. at 239-40. In *Theobald* the Supreme Court of New Jersey stated: There is no precise measure of the amount of wrong. Even if the trial is as to damages only, successive injuries 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.

*Id.* at 239-40.

85. See *supra* notes 26 to 32 and accompanying text.

86. See *supra* notes 27 to 32 and accompanying text.

87. See 12 Pa. L.J. Rptr. No. 21 at 4.

88. 522 A.2d at 13 (Justice Zappala dissenting).

89. *Id.* at 13. Justice Zappala read 42 PA. CONS. STAT. ANN. § 8326 (Purdon 1982) as clearly mandating that when one joint tortfeasor settles against the other tortfeasor the claim should be reduced in the "amount of the consideration paid for the release." *Id.*

90. *Id.*



UCATA, for section 8324(b) mandates that a joint tortfeasor is entitled to contribution when he has paid more than his pro rata share.<sup>91</sup> Critics argue that it is clear under this provision that Giant Eagle Markets is entitled to contribution because Giant Eagle has paid more than its pro rata share of the jury verdict.

#### IV. WALTON V. AVCO CORP.

In *Walton v. Avco Corp.*<sup>92</sup> the Superior Court of Pennsylvania held that a settling tortfeasor was entitled to contribution from the non-settling tortfeasor when it turned out that the settlement amount paid by the settling tortfeasor was greater than his proportionate share of damages as determined by a jury.<sup>93</sup> Therefore, in *Walton*, the non-settling tortfeasor did not have to pay his full pro rata share of damages to the plaintiff, and as a result the plaintiff did not receive "the benefit of his bargain." This result is the exact opposite of the end result in *Charles*.

However, the majority in *Walton* did not view their holding as contravening the rules established by the Pennsylvania Supreme Court in *Charles*, namely, that a non-settling tortfeasor must pay his full pro rata share of damages<sup>94</sup> to the plaintiff, and that a settling tortfeasor is not entitled to seek contribution.<sup>95</sup> Instead, the majority in *Walton* distinguished the two cases based upon the contract language used in the two different release agreements.<sup>96</sup> The court in *Walton* pointed out that the release agreement entered into between the settling tortfeasor and plaintiff in *Charles*<sup>97</sup> made no mention of the settling tortfeasor's right to seek contribution from the non-settling, tortfeasor, while the release agreement

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91. *Id.*

92. 557 A.2d 372 (1989).

93. *Id.* at 373. In *Walton* the court held that a "helicopter engine manufacturer that entered into settlement agreement with representatives of deceased helicopter pilot in products liability action was entitled to seek contribution against helicopter manufacturer after settlement figures exceeded jury award entered against both engine manufacturer and helicopter manufactures". *Id.*

94. 522 A.2d at 2. In *Charles* the Pennsylvania Supreme Court specifically held, ". . . that sound policy as well as proper interpretation of the pertinent statutory authority compel a holding that the non-settling tortfeasor is required to pay his full pro rata share." *Id.*

95. *Id.* at 4.

96. 557 A.2d at 384. The majority in *Walton* arrived at their holding by distinguishing the release language in the two cases. *Id.*

97. The release language of the settlement agreement in *Charles* provides in pertinent part, ". . . I further agree that any recovery that I may obtain against any . . . corporation other than Giant Eagle Markets, Inc. . . . shall be reduced to the extent of the pro rata share of . . . Giant Eagle. 522 A.2d at 5.

entered into in *Walton* specifically reserved the settling tortfeasor's right to seek contribution.<sup>98</sup> The majority in *Walton* viewed this contract language as reviving the settling tortfeasors right to contribution.<sup>99</sup>

In analyzing the holding of *Walton* it is clear to see that the majority in *Walton* took a decidedly contractual approach in determining whether, under the particular facts of *Walton*, the settling tortfeasor was entitled to seek contribution. The majority simply looked at the language of the release agreement, found it to be distinguishable from the release in *Charles*, and enforced the agreement to the letter. The result of such an interpretation being that it thrusts the area of joint tortfeasor releases back into chaos.

This is so because there is no getting around the fact that the result in *Walton* is directly at odds with the broad equitable and public policy reasons behind the Supreme Court's decision in *Charles*. The goal of the Pennsylvania Supreme Court in *Charles* was to give the plaintiff the "benefit of his bargain." As we have seen this marked a shift from the previous law which had favored settling tortfeasors. Now, the Superior Court with its holding in *Walton* has taken a step to shift the law back to favoring setting tortfeasors and denying plaintiff's the benefit their good bargaining. With the advent of *Walton* all attorney's representing settling tortfeasors will automatically include in the release agreements that they do not relinquish their right to seek contribution. This, according to the court in *Walton*, will be sufficient to take the settlement agreement out of the scope of the rules regarding joint tortfeasor releases enunciated in *Charles*.

The question now in Pennsylvania is whether the contract approach to settlement agreements enunciated in *Walton* will stand. Reading the majority's opinion in *Charles* makes it hard to believe that the holding of *Walton* will stand the test of time for two reasons. First, the Supreme Court of Pennsylvania gave no indication in *Charles* that its holding would have been any different had the release language specifically reserved the right to contribu-

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98. The relevant portions of the *Walton* release agreement are as follows:

. . . It is further understood and agreed and it is the express intent of the parties to this agreement that this release shall not in any way effect the rights of Avco . . . to pursue claims for contribution and/or indemnity arising out of the same accident against Summa Corporation and/or Executive Helicopters, Inc. of Atlanta, Georgia.

557 A.2d at 382.

99. *Id.* at 384.

tion.<sup>100</sup> Second, the majority in *Charles* took the view that any overpayment made by the settling tortfeasor should be viewed as the price that the tortfeasor paid for buying his peace of mind and avoiding any further involvement in the litigation. Taking these two factors into consideration indicates that the holding of *Walton* and its purely contractual approach to joint tortfeasor releases is contrary to the Supreme Court's reasoning in *Charles* and their obvious desire to allow the plaintiff the benefit of his bargain.<sup>101</sup>

*Kenneth J. Cammarato*

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100. 12 Pa. L.J. Rptr. No. 21 at 4.

101. 522 A.2d at 4.