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## In New York, Equitable Apportionment of Fault Among Joint Tortfeasors is an Affirmative Defense and Not an Absolute Right

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On July 29, 2008, the United States Court of Appeals for the Second Circuit addressed an unsettled issue of New York law in the implementation of New York General Obligations Law ("NY GOL") § 15-108(a). A plaintiff in New York, who settles with one of several joint tortfeasors, is subject to § 15-108(a), which provides that its claim against the remaining (non-settling) tortfeasors is reduced by the greater of:

- the amount paid for the release;
- the amount stipulated in the release; and
- the released tortfeasor's equitable share of the plaintiff's damages.

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