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## Contribution Among Pennsylvania Tort-Feasors

Imagine that Driver X and Driver Y are approaching an intersection. Driver X runs a red light and collides with Driver Y. Driver Y, however, is intoxicated. P, a passenger in Y's car, sustains injuries caused by the collision. P sues X and Y. Prior to trial, P settles with Driver Y for \$10,000.00, and releases only Driver Y and no other tort-feasor. Subsequently, a jury verdict of \$20,000.00 is returned in favor of P finding X 60% negligent, and Y, the settling tort-feasor, only 40% negligent. What result as to all of the relevant parties? What are their rights and responsibilities? And the bottom line, how much must each pay?

Because of the very difficult and unsettling problems which befall this topic in Pennsylvania, as well as in other jurisdictions, it is important that we gain an understanding of the history and development of contribution among tort-feasors. This can best be done in this jurisdiction<sup>1</sup> by analyzing the rule under the common law; that is, the rule existing prior to the *Charles v. Giant Eagle Markets*<sup>2</sup> decision in 1987, and the rule established by the *Giant Eagle*<sup>3</sup> case. The case law cited in *Giant Eagle*<sup>4</sup> gives us an excellent vehicle in which to journey into the past to witness the law's development.

The common law treated joint tort-feasors very harshly. Joint tort-feasors had no right to contribution, and a settlement and release acted to release all tort-feasors, regardless of the express terms of the release.<sup>5</sup> There were basically two lines of reasoning which were used to justify this harshness. The first reason was that the tort-feasors were jointly and severally liable, meaning that each was liable for the whole of the damage, and plaintiff could have but one recovery.<sup>6</sup> If plaintiff went after one defendant, the recovery awarded

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1. The Commonwealth of Pennsylvania.
  2. *Charles v. Giant Eagle Markets*, 513 Pa. 474, 522 A.2d 1 (1987).
  3. *Id.*
  4. *Id.*
  5. *Thompson v. Fox*, 326 Pa. 209, 192 A.2d 107 (1937). *Accord* *Hilbert v. Roth*, 395 Pa. 270, 149 A.2d 648 (1959). "Contribution" is described as the act of requiring one defendant, who was partially responsible for a tortious wrong, to pay a portion of the damages to another defendant, who was made to pay the entire award. A "settlement" is a private contract between a plaintiff and defendant, whereby that defendant is released from liability for a sum of money.
  6. *Thompson*, 326 Pa. 209, 192 A.2d 107.

to plaintiff, from that defendant, was treated as a satisfaction of all claims against all defendants, thus releasing all other defendants.<sup>7</sup> The basis of joint and several liability was that common law courts did not have a manner of apportioning liability among defendants.<sup>8</sup> The second reason is that contribution was a topic of equity, and equity would not aid wrongdoers in an attempt to extract contribution from one another.<sup>9</sup> This same equitable principal, and the lack of ability to apportion liability, also barred plaintiff's recovery if he was contributorily negligent.<sup>10</sup>

Application of the common law principles to the hypothetical at the beginning of this comment would achieve the following results. Plaintiff, having settled with one tort-feasor for \$10,000.00 and having released him, would have released the other tort-feasor, regardless of the express terms of the release. Thus, the plaintiff would collect only \$10,000.00, or half of the jury verdict. X, despite being 60% negligent for the injury, would pay nothing. Y, who was only 40% negligent for the injury, would pay 50% of the jury verdict and could not seek contribution from X because equity would not apportion liability among wrongdoers.<sup>11</sup> This result is softened by remembering that the common law had no way of arriving at the percentage of liability demonstrated in the hypothetical. Arguably, this is the root problem of the common law view.

However harsh, the common law cannot be said to be unchanging and unforgiving. To make the view more palatable, certain exceptions were carved from the strict common law rule. One exception pertained to contribution, where the rule was interpreted to bar contribution among wrongdoers only when the tort-feasors committed an act which they knew was wrong, immoral, criminal in nature, or where the act was intentional.<sup>12</sup> *Puller v. Puller*<sup>13</sup> later held common law contribution to be the well established law in Pennsylvania.<sup>14</sup> A few

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7. *Id.*

8. *Menarde v. Philadelphia Transp. Co.*, 376 Pa. 497, 103 A.2d 681 (1954). As the apportionment of liability was considered too speculative at this time, common law judges had not yet discovered a fair method of accomplishing this aim.

9. *Id.*

10. *Borough of Carlisle v. Brisbane*, 113 Pa. 544, 6 A. 372 (1886). The amount of plaintiff's negligence could similarly not be apportioned for the reason stated *supra* note 8.

11. *See supra* note 8 and accompanying text.

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

13. *Puller v. Puller*, 380 Pa. 219, 110 A.2d 175 (1955).

14. *Id.* at 221, 110 A.2d at 177.

exceptions were also made to the rule that plaintiff's contributory negligence was a complete bar to recovery. Included in these were that, normally, rescuers<sup>15</sup> were excepted, as were plaintiffs involved in actions where the conduct of the defendants was willful, wanton or reckless in nature.<sup>16</sup> Any of the exceptions mentioned above would alter the common law result of the hypothetical as follows: since the conduct of the hypothetical defendants was merely negligent, Y could now seek contribution from X in the amount of \$5,000.00.<sup>17</sup> Plaintiff, however, would still collect merely half of the would-be jury verdict.<sup>18</sup>

These common law principles were further refined and sharpened by *Daugherty v. Hershberger*<sup>19</sup> in 1956, and *Mong v. Hershberger*<sup>20</sup> in 1963. Both involved derivations of the same automobile negligence actions. *Daugherty*<sup>21</sup> involved an issue of first impression<sup>22</sup> whereby, in order to facilitate a decision, the Pennsylvania Supreme Court had to interpret section 4 of the Uniform Contribution Among Joint Tortfeasors Act.<sup>23</sup> The facts of *Daugherty*<sup>24</sup> were that on July 13, 1952, a three vehicle collision occurred at an intersection in Erie County.<sup>25</sup> The vehicles were driven by Daugherty, Hershberger, and Mong.<sup>26</sup> Daugherty and all of his passengers, which included his wife, three children, and Carl and Gertrude Williams, sued for personal injuries.<sup>27</sup> Carl Williams subsequently died and his administratrix brought suit on behalf of the estate.<sup>28</sup> Daugherty and all six passengers entered into a settlement with defendant Mong.<sup>29</sup> The values of that settlement<sup>30</sup> must be displayed in order to gain a full understanding of the case:

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15. *Corbin v. City of Philadelphia*, 195 Pa. 461, 45 A. 1070 (1900).

16. *Ennis v. Atkin*, 354 Pa. 165, 47 A.2d 217 (1946).

17. See *infra* note 26 and accompanying text.

18. See *supra* note 6 and accompanying text.

19. *Daugherty v. Hershberger*, 386 Pa. 367, 126 A.2d 730 (1956).

20. *Mong v. Hershberger*, 200 Pa. Super. 68, 186 A.2d 427 (1963).

21. *Daugherty*, 386 Pa. 367, 126 A.2d 730.

22. *Id.* at 369, 126 A.2d at 731.

23. 12 PA. STAT. ANN. § 2082 (Purdon 1951) (repealed).

24. *Daugherty*, 386 Pa. 367, 126 A.2d 730.

25. *Id.* at 369, 126 A.2d at 731.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at 370, 126 A.2d at 732.

|                            |              |
|----------------------------|--------------|
| Wilbert Daugherty          | \$ 5,145.23  |
| Child # 1                  | 425.00       |
| Child # 2                  | 650.00       |
| Child # 3                  | 1,000.00     |
| Wife                       | 779.77       |
| Gertrude Williams          | 1,500.00     |
| Estate of Carl D. Williams | 4,000.00     |
|                            | <hr/>        |
| Total                      | \$ 13,500.00 |

Mong had been released and discharged<sup>31</sup> from all liability under the 1951 Act.<sup>32</sup> The remaining tort-feasor's liability was reduced by 50%, Mong's pro-rata share of the release<sup>33</sup> (one of two tort-feasors).<sup>34</sup> Subsequently, jury verdicts were returned in favor of the plaintiffs in the following amounts:

|                            |              |
|----------------------------|--------------|
| Wilbert Daugherty          | \$ 5,559.49  |
| Child # 1                  | 500.00       |
| Child # 2                  | 1,000.00     |
| Child # 3                  | 500.00       |
| Wife                       | 2,000.00     |
| Gertrude Williams          | 1,161.50     |
| Estate of Carl D. Williams | 1,000.00     |
|                            | <hr/>        |
| Total                      | \$ 11,720.99 |

The trial court ruled<sup>35</sup> that Hershberger, the non-settling tort-feasor, was liable to plaintiffs for 50% of the jury's assessment of the damages or \$5,860.50, irrespective of the amount received by way of settlement with Mong.<sup>36</sup> The Supreme Court of Pennsylvania granted allocatur, then reversed and remanded.<sup>37</sup> In reversing, the

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31. *Id.*

32. 12 PA. STAT. ANN. § 2082 (Purdon 1951) (repealed).

33. The reason that Mong's pro-rata share of the liability was decided to be 50% was that the law at this time had discovered a system whereby percentages of liability were decided according to the number of tort-feasors.

34. Since there were two tort-feasors in this case, and an absence of contributory negligence, these two were considered 100% negligent for the entire wrong. Hence, liability was apportioned at 50% each. Were there three tort-feasors involved; 33-1/3% would have been apportioned to each of the three.

35. *Daugherty*, 386 Pa. at 371, 126 A.2d at 732.

36. *Id.*

37. *Id.* at 375, 126 A.2d at 732.

court modified the trial court's holding, stating that Hershberger was entitled to credit the amounts Mong paid in excess of what the jury awarded plaintiffs, and deduct it from his liability of \$5,860.50.<sup>38</sup> Because Mong paid certain plaintiffs a total in excess of \$4,021.23, Hershberger was entitled to subtract that excess from his total liability and thus paid only \$1,839.26.<sup>39</sup>

Mr. Justice Musmanno dissented, arguing that this question was one of fairness, not of mathematics.<sup>40</sup> He stated that Hershberger's contention was astounding, the majority's approval of such even more so,<sup>41</sup> and that the decision would benefit a person not at all a party to the settlement negotiation.<sup>42</sup> The decision of the majority was also criticized on the grounds that it was based neither upon precedent, nor reason,<sup>43</sup> as it sought to blend a contract and a judgment in an attempt to make them one.<sup>44</sup> In conjunction with the fairness argument, Justice Musmanno also reiterated the purpose of the Act of 1951<sup>45</sup>—to encourage potential litigants to settle;<sup>46</sup> something that this holding certainly does little to advance.<sup>47</sup>

The harsh *Daugherty* rule was, however, further refined by the Pennsylvania Superior Court in *Mong v. Hershberger*,<sup>48</sup> a case in which the Supreme Court of Pennsylvania denied allocatur.<sup>49</sup> The facts of *Mong*<sup>50</sup> are identical to the facts in *Daugherty*,<sup>51</sup> except that Mong brought suit against Hershberger for contribution.<sup>52</sup> The superior court found that a settling tort-feasor who was released from liability for his pro-rata share, but paid more than his share of the subsequent jury verdict, could seek contribution of 50% from the non-settling tort-feasor.<sup>53</sup> This court did so purely on equitable grounds

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38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* at 376, 126 A.2d at 734.

42. *Id.* at 377, 126 A.2d at 737.

43. *Id.*

44. *Id.* at 381, 126 A.2d at 737.

45. *Id.*

46. *Id.*

47. *Id.* at 382, 126 A.2d at 737. As Justice Musmanno points out, this type of treatment will frighten those who settle by forcing them to do what they chose to avoid by settling—going to court.

48. *Mong v. Hershberger*, 200 Pa. Super. 68, 186 A.2d 427 (1963).

49. *Id.*

50. *Id.*

51. *Daugherty*, 386 Pa. 367, 126 A.2d 730.

52. *Mong*, 200 Pa. Super. at 70, 186 A.2d at 428.

53. *Id.* at 72, 186 A.2d at 429.

to further the purpose of the statute.<sup>54</sup> This being the case, let us return to the hypothetical.

Under *Daugherty*<sup>55</sup>, plaintiff would recover \$20,000.00 or the amount of the jury verdict. Ten thousand dollars (\$10,000.00) had already been paid by Y for his release, as to his pro-rata share. X would be required to pay the plaintiff \$10,000.00, even though his 60% share of the damages is really \$12,000.00, since X is entitled to credit Y's \$2,000.00 overpayment against that \$12,000.00. Thus, the following result is reached. Y would have no right to contribution. But under the equity principle developed in *Mong*,<sup>56</sup> Y would be able to seek contribution to the extent that Y overpaid his pro-rata share. This would result in X paying Y \$2,000.00. The end result is that plaintiff gets his \$20,000.00; \$8,000.00 from Y and \$12,000.00 from X, according to their assigned percentage of liability. This result is perfectly fair, yet the objective of the Act<sup>57</sup>—settlement—is deterred more than encouraged. The outcome reached in the above hypothetical, based on *Daugherty*<sup>58</sup> and *Mong*,<sup>59</sup> occurred before Pennsylvania had adopted a comparative negligence system.<sup>60</sup>

In 1987, in the case of *Charles v. Giant Eagle Markets*,<sup>61</sup> contribution among tort-feasors was again discovered, and altered, pursuant to the adoption of principles of comparative negligence.<sup>62</sup> Comparative negligence is now used in place of common law contributory negligence. As a result of this new system, fault may now be apportioned among tort-feasors on a percentage basis.<sup>63</sup> The only case interpreting the new law is the one that established the new law—*Charles v. Giant Eagle*,<sup>64</sup> a case of first impression.<sup>65</sup> The facts of this case follow.

On January 17, 1977, George Charles suffered injuries as the result of a fall near the door of a Giant Eagle retail store, when he slipped

54. *Id.* See Swartz v. Sunderland, 403 Pa. 222, 169 A.2d 289 (1961).

55. *Daugherty*, 386 Pa. 367, 126 A.2d 730.

56. *Mong*, 200 Pa. Super. 68, 186 A.2d 427.

57. 42 PA. CONS. STAT. ANN. § 8321, *et seq.* (Purdon 1978).

58. *Daugherty*, 386 Pa. 367, 126 A.2d 730.

59. *Mong*, 200 Pa. Super. 68, 186 A.2d 427.

60. 42 PA. CONS. STAT. ANN. § 7102 (Purdon 1978). This section is basically a reenactment of 17 PA. STAT. ANN. §§ 2101 and 2102 (Purdon 1976). See *infra* note 82 and accompanying text.

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

62. 42 PA. CONS. STAT. ANN. § 7102 (Purdon 1978).

63. *Id.*

64. *Giant Eagle*, 513 Pa. 474, 522 A.2d 1.

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

on an ice-covered automatic door mat while applying pressure to a malfunctioning electric door.<sup>66</sup> The door was manufactured by Stanley Magic Door, Inc. and Jed Door, (hereinafter "Stanley"). Accordingly, Charles filed suit against both Giant Eagle and Stanley.<sup>67</sup> Before trial, Charles settled with Giant Eagle for \$22,500.00, and released only Giant Eagle from their pro-rata share of liability.<sup>68</sup> Subsequently, the jury found Charles' damages to be \$31,000.00, apportioning liability at 60% for Stanley and 40% for Giant Eagle.<sup>69</sup> Plaintiff was found not comparatively negligent. Giant Eagle's liability amounted to \$18,600.00, while Stanley was liable for \$12,400.00, as per jury verdict.<sup>70</sup> Stanley entered judgment on the verdict, stating that since Giant Eagle had already paid plaintiff \$22,500.00, Stanley was now only liable for the balance, or \$8,500.00.<sup>71</sup> The trial court agreed with Stanley, and the Pennsylvania Superior Court affirmed.<sup>72</sup>

Charles petitioned for, and was granted allocatur by the Supreme Court of Pennsylvania.<sup>73</sup> There, appellant renewed his argument that because of comparative negligence he should be able to keep the entire Giant Eagle settlement value, and at the same time, require Stanley to pay its full pro-rata share, thus resulting in a windfall for the plaintiff.<sup>74</sup> Giant Eagle, on the other hand, argued that plaintiff should receive only the amount of damages awarded by the jury, while requiring Stanley to contribute to Giant Eagle in the amount that Giant Eagle paid in excess of their pro-rata share,<sup>75</sup> pursuant to *Mong*.<sup>76</sup> Although Giant Eagle had the case law on its side, the supreme court agreed with the argument of the plaintiff, thus overruling<sup>77</sup> both *Daugherty*<sup>78</sup> and *Mong*.<sup>79</sup>

The supreme court ultimately apportioned damages as follows: plaintiff received \$22,500.00 from Giant Eagle and \$12,500.00 from Stanley, totalling \$35,000.00. Giant Eagle could not seek contribution

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

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

68. *Id.* at 483-84, 522 A.2d at 5.

69. *Id.* at 484, 522 A.2d at 5.

70. *Id.*

71. *Id.*

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

73. *Giant Eagle*, 513 Pa. at 485, 522 A.2d at 6.

74. *Id.*

75. *Id.*

76. *Mong*, 200 Pa. Super. 68, 186 A.2d 427.

77. *Giant Eagle*, 513 Pa. at 485, 522 A.2d at 6.

78. *Daugherty*, 386 Pa. 367, 126 A.2d 730.

79. *Mong*, 200 Pa. Super. 68, 186 A.2d 427.

from Stanley upon the reasoning that settlements should be encouraged through reliance on the benefit of the bargain.<sup>80</sup> The court basically relied on the comparative negligence statute<sup>81</sup> for determining the outcome of this case. The statute is set out, in pertinent part, below:

§ 7102. Comparative negligence.

[E]ach 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. . .[.] Any defendant who is so *compelled* to pay more than his percentage share may seek contribution.<sup>82</sup> (Emphasis added.)

The word "compelled" seemed to weigh heavily upon the minds of the court when the *Giant Eagle* decision was made.<sup>83</sup> It was held that since *Giant Eagle* voluntarily entered into a settlement agreement, it was not so "compelled" to pay more than its percentage of liability.<sup>84</sup> Since this method of contribution admittedly does promote settlements by keeping them final and static, it would almost be fathomable to arrive at such a definition of "compelled." However, there is another statute which is arguably applicable. The Pennsylvania Contribution Statute<sup>85</sup> reads as follows:

§ 8326. Effect of release as to other tort-feasors.

A release by the injured person of one joint tort-feasor, whether before or after judgment, does not discharge the other tort-feasors unless the release so provides, but *reduces the claim* against the other tort-feasor in the *amount of the consideration* payed [sic] 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*.<sup>86</sup> (Emphasis added.)

This statute is the one used by Justice Zappala in his dissenting opinion, although I believe that at least one other statute was misused.<sup>87</sup> An argument made by Justice Zappala which seems directly on point, is his conclusion<sup>88</sup> that the majority made an error by

80. *Giant Eagle*, 513 Pa. at 495, 522 A.2d at 10-11.

81. 42 PA. CONS. STAT. ANN. § 7102 (Purdon 1978).

82. *Id.*

83. *Giant Eagle*, 513 Pa. at 495, 522 A.2d at 11.

84. *Id.*

85. 42 PA. CONS. STAT. ANN. § 8326 (Purdon 1978). This section is basically a reenactment of 12 PA. STAT. ANN. § 2085 (Purdon 1951).

86. *Id.*

87. 42 PA. CONS. STAT. ANN. § 8324 (Purdon 1978). See *infra* note 99 and accompanying text.

88. *Giant Eagle*, 513 Pa. at 496, 522 A.2d at 11.

apportioning damages pursuant to the comparative negligence statute,<sup>89</sup> while seemingly ignoring relevant portions of the contribution statute.<sup>90</sup> This conclusion virtually clings to the rule established by *Daugherty*<sup>91</sup> and *Mong*.<sup>92</sup> Justice Zappala stated that the majority's conclusion, that the verdict should always be reduced only by the pro-rata share of the settling tort-feasor, is "simply incredible", in that it contravenes express, unambiguous statutory language to the contrary.<sup>93</sup> This language is emphasized in the statutory quote above.<sup>94</sup>

As just intimated, it appears as though Justice Zappala would favor a return to *Daugherty*<sup>95</sup> and *Mong*,<sup>96</sup> thus allowing Giant Eagle contribution from Stanley.<sup>97</sup> Under this prior law, Stanley would pay plaintiff only the balance of the total damages minus the settlement value.<sup>98</sup> I do not agree with either the dissent or the cases previously condoning such result. Justice Zappala relies on the section of the contribution statute dealing with the right to contribution.<sup>99</sup> The relevant subsection of this same statute, which was apparently ignored, reads as follows:

(c) Effect of settlement—A joint tort-feasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tort-feasor whose liability to the injured person is not extinguished by the settlement.<sup>100</sup>

The statute actually speaks for itself, for in this case Giant Eagle settled, and the release applied only to Giant Eagle. This statutory language is equally plain and unambiguous, therefore, Giant Eagle should not be allowed contribution.

Perhaps a better understanding of the system condoned by the majority, as well as Justice Zappala's dissenting view, can be obtained by applying both views to the prototype hypothetical. Applying Justice Zappala's theory to the hypothetical yields a result identical to that

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89. 42 PA. CONS. STAT. ANN. § 7102 (Purdon 1978).

90. 42 PA. CONS. STAT. ANN. § 8326 (Purdon 1978).

91. *Daugherty*, 386 Pa. 367, 126 A.2d 730.

92. *Mong*, 200 Pa. Super. 68, 186 A.2d 427.

93. *Giant Eagle*, 513 Pa. at 496, 522 A.2d at 11.

94. See *supra* text accompanying note 86.

95. *Daugherty*, 386 Pa. 367, 126 A.2d 730.

96. *Mong*, 200 Pa. Super. 68, 186 A.2d 427.

97. *Giant Eagle*, 513 Pa. at 508, 522 A.2d at 17.

98. *Daugherty*, 386 Pa. 367, 126 A.2d 730.

99. 42 PA. CONS. STAT. ANN. § 8324 (Purdon 1978).

100. *Id.*

achieved when the *Daugherty*<sup>101</sup> and *Mong*<sup>102</sup> scenario was applied to the hypothetical.<sup>103</sup> The *Giant Eagle*<sup>104</sup> majority view is applied as follows. P gets a \$22,000.00 total recovery; \$10,000.00 from Y by the terms of the settlement, and \$12,000.00 from X, according to his percentage of liability. Y may not seek contribution because he was not "compelled" to pay more than his pro-rata share, rather, his overpayment was voluntary. As per Justice Zappala's view, this result, in part, simply contravenes direct, unambiguous language of the Pennsylvania Contribution Statute mandating that the entire judgment should be reduced by the consideration paid for the release; or the settling tort-feasor's pro-rata share, whichever is greater.<sup>105</sup>

If we look at the majority's view from another perspective; a perspective absent all statutory guidance, save the comparative negligence statute,<sup>106</sup> it does appear fair. The supposed goal of the contribution statute<sup>107</sup> is to promote settlement, which the majority's view certainly does by holding settlements static. In the hypothetical, for example, P and Y entered into a contract. The contract stated that P would release Y from all liability for the stated sum of \$10,000.00. This is a contract, final and binding as to the concerned parties, and the majority view in *Giant Eagle*<sup>108</sup> allows for this. On the other hand, X does not escape paying the full amount of his percentage of liability. Furthermore, Y should not be allowed contribution because the contract was separate from the court proceedings and the contract was, in fact, entered into expressly to avoid the proceedings that Y would argue allegedly conferred this right of contribution upon him. That P receives a windfall is also of no consequence, since it is not actually a windfall but a stipulated sum of money received pursuant to a written agreement which is supported by consideration. Also, the contract for settlement could easily have been for less than what Y would have paid under the jury verdict, and, by reversing the arguments for the above parties, the same logical, equitable result is reached.

The problem with the majority view, as well as the dissenting view, lies not with their reasoning, which is perfectly sound, but with the

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101. *Daugherty*, 386 Pa. 367, 126 A.2d 730.

102. *Mong*, 200 Pa. Super. 68, 186 A.2d 427.

103. See *supra* notes 55 - 60 and accompanying text.

104. *Giant Eagle*, 513 Pa. 474, 522 A.2d 1.

105. 42 PA. CONS. STAT. ANN. § 8326 (Purdon 1978).

106. 42 PA. CONS. STAT. ANN. § 7102 (Purdon 1978).

107. 42 PA. CONS. STAT. ANN. § 8321, *et seq.* (Purdon 1978).

108. *Giant Eagle*, 513 Pa. 474, 522 A.2d 1.

way in which the statutory authority was apparently ignored. If all of the relevant statutory authority<sup>109</sup> is applied to our hypothetical, the following result would be reached. Y would pay \$10,000.00 pursuant to his contract with P. X would pay only the difference between the jury verdict, \$20,000.00, and the amount Y paid P for the settlement, \$10,000.00, or the \$10,000.00 total, regardless of the percentage of liability since the consideration paid was greater than Y's pro-rata share of liability.<sup>110</sup> Plaintiff would receive only the amount of the jury verdict. Y has no right to contribution since there is express statutory authority which forbids it,<sup>111</sup> and other statutory language<sup>112</sup> which when read in conjunction with the former language<sup>113</sup> can only be interpreted to allow contribution when one tort-feasor is "compelled" by judgment to pay the full amount.<sup>114</sup> The conclusions reached thus far are that the *Giant Eagle*<sup>115</sup> majority was wrong about how much the verdict is reduced by a prior settlement, and that the dissent is wrong in deciding that *Giant Eagle* should be allowed contribution.<sup>116</sup>

Perhaps the point to be reached by way of the above conglomeration is simply that the courts might fare better in this area by applying the statutory law as it is written and meant to be interpreted. Significant change should be left to the legislature. Normally, this statement would be viewed as a quick way around the problem. But when faced with a concept apparently as complex as contribution, it is no aid to practicing lawyers to read the plain language in the statute only to find that they must have been reading Sanskrit<sup>117</sup> when they read the cases interpreting the language. A possible solution to the confusion that may result from super-legislating is to apply the existing statutory law to the facts, as was done with the hypothetical, and not inject equitable morals into an area where it would contravene direct statutory authority. When the legislature gets the message, a process which will certainly be accelerated by the *Giant Eagle*<sup>118</sup> decision, the forthcoming change will originate from the proper place.

*John W. Bitonti*

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109. 42 PA. CONS. STAT. ANN. §§ 7102 and 8321, *et seq.* (Purdon 1978).

110. 42 PA. CONS. STAT. ANN. § 8326 (Purdon 1978).

111. 42 PA. CONS. STAT. ANN. § 8324 (Purdon 1978).

112. 42 PA. CONS. STAT. ANN. § 7102 (Purdon 1978).

113. 42 PA. CONS. STAT. ANN. § 8324 (Purdon 1978).

114. 42 PA. CONS. STAT. ANN. § 7102 (Purdon 1978).

115. *Giant Eagle*, 513 Pa. 474, 522 A.2d 1.

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

117. An ancient form of language and written communication.

118. *Giant Eagle*, 513 Pa. 474, 522 A.2d 1.

