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## Arising from the Same Injury: Applying NY General Obligations Law § 15-108(a) in Multi-Litigation Situations

New York General Obligations Law § 15-108(a) (GOL 15-108) applies when a plaintiff alleges multiple defendants are liable for tortious conduct for the same injury, but one or more defendants settle, and the trial proceeds against the remaining defendants. GOL 15-108 dictates that the plaintiff's total recovery at trial is reduced by the amount of the settlement. A recent case from the Appellate Division, Second Department explores the contours of the "same injury" language in GOL 15-108 and serves as an important reminder that "injury" and "damages" are distinct concepts under the statute.

### **The Case: *Fox Paine & Co., LLC et al. v. Equity Risk Partners, Inc.***

In *Fox Paine & Co, LLC v. Equity Risk Partners, Inc.*, No. 52607/14 (2d Dep't 2021), the plaintiffs, Fox Paine and Saul Fox, sued the insurer defendants to recover for breach of contract, fiduciary duty, and fraud. The plaintiffs alleged the defendants acted for the benefit of certain third parties, which resulted in those parties obtaining insurance proceeds under the plaintiffs' policies. The defendants moved to compel the plaintiffs to disclose a 2012 settlement agreement between the plaintiffs and the third parties, arguing that both actions involved the same injuries because the plaintiffs sought attorneys' fees in both lawsuits. Hence, the defendants claimed the prior action was a potential offset under GOL 15-108, and the settlement agreement was discoverable.

The Appellate Division disagreed, holding GOL 15-108 did not apply because while the plaintiffs may have sought the same damages in both actions, i.e., attorneys' fees, the two cases involved different injuries. In particular, though both cases involved tortious conduct, the alleged injuries were different and unrelated. The fact that the plaintiffs sought the same damages in both actions was insufficient to trigger GOL 15-108, so the defendants were not entitled to review the 2012 settlement agreement.

### **Takeaway**

GOL 15-108 provides important but not boundless protection to non-settling defendants in multi-party tort litigation. Only tortious conduct triggering the "same injury" will entitle defendants to an offset at trial for any funds recovered by the plaintiff in a pre-trial settlement.